
(2014) 08 MAD CK 0249

In the Madras High Court

Case No : W.P. (MD). Nos. 5276, 7747 of 2014 and M.P. (MD). Nos. 1, 1, 2 and 2 of 2014

K. Ramaiah

APPELLANT

Vs

The Principal Chief Conservator of Forest

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0249

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner in W.P. (MD). No. 5276 of 2014 is one K. Ramaiah, S/o. Karuppaiah and he has sought for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the license issued in favour of the 7th respondent and to quash the same and to direct the first respondent to strictly comply with the directions issued by the Hon''ble Supreme Court in W.P. (C). No. 202 of 1995, dated 30.10.2012.

2. The allegation of the petitioner is that the seventh respondent has shifted his saw mill to nanja land, which is against the Government policy of preservation of agricultural Land and in violation of the directions issued by the Hon''ble Supreme Court of India, in its order dated 30.10.2002. Further, it is submitted that the third respondent viz., Wild Life Warden, Megamalai Division, has failed to follow G.O. Ms. No. 355, Environment and Forest Department, dated 19.08.1998 and the decision of the Hon''ble Division Bench of this Court in W.A. No. 1706, 1707 and 1708 of 2012. Further it is stated that the third respondent simply ignored the rules framed by the Government of Tamil Nadu viz., the Tamil Nadu Regulation of Wood Based Industries Rules, 2010. Further, the seventh respondent has been granted license without obtaining concurrence from the Central Empowered Committee and therefore, the license issued in favour of the 7th respondent is wholly illegal.

3. The learned counsel for the petitioner elaborately referred to various factual

details and the decisions of the Hon''ble Supreme Court and the Hon''ble Division Bench of this Court, and the Rules of the Tamil Nadu Regulation of Wood Based Industries Rules. It is submitted by the learned counsel for the petitioner that the 7th respondent is operating the wood based industry in a forest, without following the provisions of the Rules and without adhering to the directions issued by the Hon''ble Supreme Court. Therefore, the license has to be cancelled.

4. Notice of motion was ordered in this writ petition on 26.03.2014. In the meantime, the first respondent by proceedings, dated 28.03.2014, has cancelled the license granted in favour of the 7th respondent and passed an order. This has been challenged by the 7th respondent therein as petitioner in W.P. (MD). No. 7747 of 2014. Though in the writ petition filed by the petitioner viz., Mr. K. Venkatachalam, Mr. K. Ramaiah viz., the petitioner in W.P. (MD). No. 5276 of 2014, is not a party, since the cancellation is on account of the representation made by Mr. K. Ramaiah, the said petitioner is also heard and these writ petitions are disposed of by a common order.

5. The learned counsel for the petitioner in W.P. (MD). No. 7747 of 2014, after elaborately referring to the factual circumstances, submitted that the petitioner was confronted with the notice, calling upon him to explain as to why his license should not be cancelled. Therefore, the petitioner has given a reply to the authorities, along with the relevant documents, stating that the complaint made by Mr. K. Ramaiah is a false one. Further, it is contended that the documents produced by the petitioner are genuine documents and no fraud or forgery has been committed. The learned counsel for the petitioner submitted that as per Rule 2(f) of the Tamil Nadu Regulation of Wood Based Industries Rules, the Wild Life Warden is the licensing authority and as per Rule 4 of the above said Rules, the licensing authority has to be satisfied with the eligibility of the applicant and then he can grant license in accordance with law. Further it is submitted that the scheme of the Rules did not provide for a consultive process between Wild Life Warden and the Conservator of Forest and hence, the action of the second respondent on the ground that there was no consultation between the Wildlife Warden and the Conservator of Forest, is against the statutory provisions and therefore, the impugned order is liable to be set aside.

6. Further it is submitted that as per Rule 10 of the Rules, the license can be revoked only after giving opportunity of being heard and therefore, the impugned order is in violation of principles of natural justice. It is submitted that the complaint of the writ petitioner in W.P. (MD). No. 5276 of 2014 was not furnished to the petitioner. Though the show cause notice refers to certain documents, the respondent has passed the impugned order by placing reliance on the statements said to have been given by the Saw Mill Owners Association, copy of which has also not been furnished to the petitioner. Therefore, it is submitted that the impugned order is wholly illegal and unsustainable.

7. The second respondent has filed a counter affidavit setting out the factual details and it is submitted that Wild Life Warden has ordered for shifting of the

petitioner's Saw Mill to a new place during 2013, exceeding his power under the Act and in the meantime, a complaint was given by the petitioner viz., Mr. K. Ramaiah and based on that, an enquiry was conducted and after affording an opportunity to the petitioner to submit a reply to the show cause notice decision was taken. Further it is submitted that the Wife Life Warden has renewed the license in the name of the petitioner without verifying the records and ordered for shifting, exceeding his statutory power. Further it is submitted that the petitioner was not able to produce any document to show that the saw mill was in existence before 2002 and he himself admits that the saw mill which had been running by his father was closed due to his ill-health. On the above grounds, the second respondent seeks to justify the impugned order.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. It is seen that the petitioner in W.P. (MD). No. 7747 of 2014 has been afforded an opportunity to show cause by submitting proof that he has been running wood based industry in the premises prior to 2002. But, he has not produced any records to show that the saw mill was in existence prior to 2002. Therefore, the onus is on the petitioner to first establish, by statutory records relevant to the saw mill trade, that the wood based industry was in existence prior to 2002. Only after discharge of the petitioner's onus, the burden of proof will shift to the respondents to show that the documents produced by the petitioner are insufficient to show that there was a saw mill in existence. Therefore, unless the petitioner produces records to establish that the saw mill was in existence prior to 2002, the same cannot be directed to be proved by the respondents.

10. The learned counsel for the petitioner would seek to rely upon the Municipal Tax Receipts and the electricity bills in respect of the building. In my considered view, those records would not establish that there was a saw mill running in the said premises. Since movement and handling of timber has been regulated under various schemes by the State Government, the petitioner can able to produce some statutory records relating to the timber trade to establish that the unit was in existence prior to 2002. Therefore, the impugned order, dated 28.03.2014, is not set side. However, on production of those documents, the petitioner is entitled to submit a representation to the first respondent and the first respondent, on being satisfied with the documents produced, shall issue notice to the petitioner, the Wild Life Warden as well as the Commissioner of Chinnamanur Municipality, Theni District and after affording an opportunity to the petitioner to place all the records and also permitting the petitioner to peruse the copies of the complaints given against the petitioner and the report submitted by the saw mill owners association which formed the basis of the impugned order and also after affording an opportunity of personal hearing, the first respondent shall pass a reasoned orders, on merits and in accordance with law.

11. It is reiterated that now the burden of proof is on the petitioner to show that the saw mill was in existence prior to 2002 by producing statutory records

relevant to the timber trade.

12. Both the writ petitions are accordingly disposed of. Consequently, connected miscellaneous petitions are closed. No costs.