
(2008) 04 AHC CK 0070
In the Allahabad High Court

Kalloo

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 141

Citation : (2008) 04 AHC CK 0070

Hon'ble Judges : Pradeep Kant, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Narayan Shukla, JJ.—The petitioner claims that he owns a saw mill since 1983, for which licence was granted to him by the Divisional Forest Officer, Bahraich in the year 1983 vide licence number 18/83. The allegation is that despite the renewal fee being deposited every year in the department, licence has not been renewed and the mill was stopped from functioning on 5.5.97, due to non renewal of the licence. The petitioner claims that he has moved several representations to the respondents and also sent a notice u/s 80 C.P.C. On 31.3.99. Since nothing was done on his approaches, the petitioner filed a writ petition bearing number 4398 (MB) of 2003, which was disposed of by the High Court on 21.8.07, requiring the petitioner to approach the appropriate forum as provided by the apex court and the matter was to be considered in accordance with law and the directives issued by the Supreme Court, keeping in mind the orders passed on 18.5.07 and 27.7.07 in the case of T.N. Godaverman v. Union of India.

2. As a sequel to the aforesaid direction, the impugned order has been passed by the Divisional Forest Officer, refusing to renew the licence and holding that the saw mill of the petitioner does not fall in any category, as classified by the apex court. This order is dated 23.1.08.

3. Sri Sushil Kumar Singh, learned Counsel for the petitioner has vehemently

urged that the order impugned is per se illegal and is against the spirit of the orders passed by the apex court and also ignores the right of renewal of the licence, which flows from the original licence and is not dependent upon subsequent fee being deposited.

4. There cannot be any quarrel that the licence, if once granted, and if there is any clause of renewal and there is no other qualification attached, the licensee gets a right for consideration of renewal, as it flows from the terms of the original licence but in the instant case, simply because the petitioner was granted licence in the year 1983, he will not have any right of renewal in view of the directives issued by the apex court in the case of T.N. Godaverman v. Union of India.

5. The law declared by the apex court is binding under Article 141 of the Constitution of India.

6. In these circumstances, we need not enter into the argument as to whether there is any right of renewal of the licence which was granted to the petitioner in the year 1983 or not.

7. So far the order impugned is concerned, it very specifically says that the licence was issued in the year 1983 but the petitioner had not deposited the licence fee nor got it renewed till date and, therefore, his saw mill does not fall in any of the categories as specified by the Supreme Court.

8. The petitioner's submission is that in view of the orders of the apex court dated 27.7.07, the authority was under an obligation to consider the case of renewal, keeping in mind that the licence is of the year 1983 and, therefore, the view taken by the authority is based on non consideration of relevant facts. We have gone through the order dated 27.7.07 passed by the apex court, which says that the Court has permitted the saw mills to function, subject to the availability of wood and fulfilment of other conditions and the appropriate authorities may permit the saw mills to run, subject to the order passed by the Supreme Court on 18th May, 2007.

9. The Supreme Court also took notice of the fact that some saw mills were illegally functioning from 1983-85 and their case was that they have functioning the saw mills but they were not having proper licences and their applications, in some cases, are pending since long before the authorities and also took notice of the fact that in some cases, the saw mills have filed applications and those saw mills have been included in category IV of the C.E.C. report and, therefore, they cannot be denied their right to operate the saw mills.

10. The apex court gave the following directions:

Under the above circumstances, those saw mills which have been functioning right from 1983 and some of them who claim to functioning from 1983 to 1997 and which are included in Category IV of the C.E.C. report, may submit fresh applications before the appropriate authorities for running their saw mills and the

appropriate authorities shall consider the availability of wood and if sufficient wood is available they may be granted fresh licenses, subject to such terms and conditions as are and/or may be prescribed.

11. The Supreme Court also took notice of the grievance of some of the saw mills that categorisation has not been done correctly. On this, the apex court gave liberty to such saw mills to approach the C.E.C. and the C.E.C. may hear them and appropriate directions be issued by the C.E.C., subject to the order passed by the Supreme Court on 18th May, 2007.

12. The petitioner in the instant case, has sworn an affidavit clearly stating that after the grant/issuance of licence in the year 1983, the petitioner had been regularly depositing the fee for renewal of the licence every year but the fact of the matter is that the statement of fact made on oath is incorrect. There is a report of the Divisional Forest Officer, Bahraich that the petitioner has not deposited any licence fee nor licence has been got renewed. The petitioner has also not brought any document on record, in support of his submission that he has been continuously depositing the renewal fee but the licence has not been renewed. On this incorrect fact alone, the petition is liable to be dismissed.

13. However, we have also considered the plea of the learned Counsel for the petitioner that in view of the apex court's order aforesaid, his application ought to have been considered, keeping in mind the said order.

14. The aforesaid order permits the consideration of application for renewal with respect to those saw mills, which fall in Category IV and those who were functioning from 1983 to 1985 and had moved applications for renewal long back but they were pending. This again is not a case where the petitioner moved any application for renewal prior to 5.5.97 i.e. after the cut of date, which has been fixed by the apex court for grant and renewal of licence. Right from the year 1983 till 5.5.97, the petitioner had not deposited the licence fee nor applied for renewal of licence. It is only on 5.5.97, the petitioner had applied for renewal.

15. We thus, do not find any illegality in the order impugned.

16. However, if the petitioner is aggrieved by non categorisation or so to say with the observation that his saw mill does not fall in any category as provided by the apex court, he is still at liberty to approach the C.E.C. as per the directive of the Supreme Court.

17. This order would not come in the way of the C.E.C., in case the petitioner approaches the Committee and makes any application for the purpose.

18. With the aforesaid liberty, the petition is dismissed.