

(2016) 07 KAR CK 0109

In the Karnataka High Court

Case No : Writ Petition No. 574 of 2015 (GM-FOR).

M. Venkataramaiah - Petitioner @HASH State of Karnataka and Others

Date of Decision : 27-07-2016

Acts Referred:

Citation : (2016) 6 KantLJ 498

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri. P.N. Manmohan, Advocate, for the Petitioner; Sri. Y.D. Harsha, Additional Government Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J. - The petitioner is before this Court assailing the order dated 25-8-2014 passed in Appeal No. 3/2010-11 by the second respondent impugned at Annexure-R to the petition. In that light, the petitioner is seeking that the appeal be allowed and the prayer as made by the petitioner be granted.

2. The petitioner is the proprietor of M/s. Uppalli Wood Industries situate at Balehalli, Chickmagalur District. The sawmill was established in the year 1996-97 in Sy. No. 111, Uppalli Grama. The sawmill, thereafter was shifted to Sy. No. 21, Balehalli Village and additional machineries were sought. With regard to the nature of consideration that had been made when the petitioner had sought for installation of additional machineries and for grant sawmill licence, the request of the petitioner had been rejected by the order dated 28-11-2012. The petitioner therefore was before this Court in W.P. No. 1731 of 2013. This Court, while considering the petition and disposing it by tire order dated 4-2-2014 has referred to the nature of contentions that had been put forth with regard to the order dated 28-11-2012 that had been assailed therein. Ultimately, this Court had set aside the order and remitted the matter for reconsideration. Pursuant thereto, such reconsideration has been made and the order impugned dated 25-8-2014 is passed.

3. The learned Counsel for the petitioner while assailing the said order would

refer to the consideration that had been made by this Court in W.P. No. 1731 of 2013, dated 4-2-2014 and in that light, would refer to the order impugned dated 25-8-2014 to point out that the consideration in terms of the observations made and directions issued by this Court has not been made.

4. The learned Government Advocate would however point out that the petitioner no doubt had been granted the sawmill licence in the year 1996-97. However, the same had not been renewed during the year 2001, during which period, the decision was rendered by the Hon'ble Supreme Court in the case of T.N. Godavarman Thirumulkpad v. Union of India, AIR 1997 SC 1228 and therefore, at this point, the authorities were not in a position to consider and dispose of the application without reference to the Central Empowered Committee.

5. Though such contention is put forth, firstly, what is necessary to be noticed is that thereafter, the license had been renewed in favour of the petitioner which was subsisting till 21-7-2009. Be that as it may, this Court, while disposing of W.P. No. 1731 of 2013, on taking note of a similar contention had ultimately observed as hereunder:

"6. In that regard, a perusal of the writ petition would disclose that the petitioner has contended that there are three other sawmills by name Ganesh Sawmill, Arfa Sawmill and Azam Sawmill, which are also located in the same area. In the objection statement, though reference has been made to the Azam Sawmill, the details with regard to the Ganesh Sawmill and Arfa Sawmill and the nature of consideration made while granting licence to the said sawmills have not been referred to. In such circumstance, the same would also become relevant for consideration while the Appellate Authority taking into consideration the request made by the petitioner seeking renewal of the licence of the sawmill. I am of the said opinion for the reason that if the contention of the petitioner that the said three sawmills are also situate at the same distance from the periphery of the forest as that of the unit belonging to the petitioner, a similar consideration requires to be made in respect of the said sawmills. In that regard, if in tire said cases, the renewal of the licence has been granted after referring to the State Empowered Committee, a similar decision requires to be taken in the instant case also.

8. On the other hand, if for some reason it has been considered that the said three sawmills were to be granted renewal of sawmill licence without referring to the State Empowered Committee for the reasons recorded therein, and if on factual finding, it is seen that the three sawmills are situated at the same distance as that of the petitioner's sawmill, a similar consideration would have to be made in the case of petitioner as well. Since all these aspects of the matter have not been taken into consideration by the Appellate Authority, the order dated 28-11-2012 would not be sustainable and the same is accordingly quashed and reconsideration is required to be made by the Appellate Authority.

9. Since at this juncture, I have arrived at the conclusion that matter is to be

reconsidered by the Appellate Authority, it is necessary to advert to the correctness or otherwise of the orders dated 5-1-2011 and 21-7-2009 which are impugned at Annexures-M and N, since the same in any event would be the subject-matter of consideration before the Appellate Authority. All contentions are left open to be urged before the Appellate Authority."

6. The said observations would indicate that the respondents while reconsidering the matter was required to keep in view those aspects as well and thereafter come to a conclusion in the matter. However, a perusal of the order impugned dated 25-8-2014 does not disclose such consideration being made but, a consideration of the same manner as had been made at the first instance and the order which had been passed on 28-11-2012 has almost been reiterated though the said order had been set aside by this Court and reconsideration was directed by taking into consideration the aspects which had been indicated.

7. Therefore, the order impugned dated 25-8-2014 (Annexure-R) would not be sustainable, the same is set aside. The Appeal No. 3/2010-11 is restored to the file of the Appellate Authority, who shall take note of the observations made in the earlier order which has been extracted above and thereafter pass fresh orders in accordance with law. The proceedings shall be concluded as expeditiously as possible but, not later than three months from the date on which a copy of this order is furnished.

8. Petition disposed of accordingly.