

(2015) 11 KAR CK 0354

In the Karnataka High Court

Case No : WP Nos. 107311/2015, 107310, 107312, 107241, 104241, 104136
and 106561/2015 (GM-FOR)

Praveen and Others

APPELLANT

Vs

Principal Chief Conservator of Forests and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (2015) 11 KAR CK 0354

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Shivaraj P. Mudhol, for the Appellant; M. Kumar, Addl. Govt.
Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Narayana Swamy, J.—The petitioners state that they are running sawmills by obtaining due licence as per the provisions of law since 2001 & 2002 and from time to time they got them renewed by the competent authority and all those saw-mills, as it is submitted, are situated within the limits of Corporation/Municipal/Panchayat area.

2. The petitioners made applications for renewal of licences. The same was rejected by the Deputy Conservator of Forest by the order dated 30.3.2015, by assigning reasons, that the saw-mills situate within 10 K.Ms. from the forest area, which is contrary to law and also the facts and principles of natural justice since the petitioners have not been heard in the matter. When the petitioners are carrying on business by obtaining licence from the competent authority, they are also entitled for renewal having complied requirements, denial of which, is arbitrary on the part of the respondents. The authority has refused renewal by referring the Circular issued by the Chief Conservator of Forest dated 28.10.2013 and Assistant Conservator of Forest dated 7.1.2015 and held that the saw-mills situate within 10 K.Ms. from the forest area.

3. It is the case of the petitioners that refusal of renewal is contrary to Rule 163(2)(A) of the Karnataka Forest Rules, 1969, hereinafter referred to as "the Rules" for short, provisos I & II thereof, which are applicable only to the new Saw-Mills whereas the petitioners' are old ones by more than 10 years. The second proviso to the Rule is that restriction of first proviso shall not be applicable for establishing and running a new saw-mill if it situates within a notified limits of Municipal Area and Industrial Area. Petitioners claim that they neither are starting a new saw-mill nor they contravene any of the provisions. In the circumstances, rejection of case of the petitioners is arbitrary and violative of principles of natural justice.

4. The learned counsel for the respondents files statement of objections and submits that the State Government made affidavit to the Hon'ble Supreme Court about the existing saw-mills which came within the forest area and in terms of the said affidavit, steps have been taken since the petitioners' saw-mills situate within 10 K.Ms. from the forest area. It is also submitted that the petitioners have an alternative remedy under Section 71-C of the Karnataka Forest Act.

5. I have heard the learned counsel for parties.

6. The impugned circular issued by the Deputy Conservator of Forest for cancellation of renewal on the ground that the saw-mills situate within 10 K.Ms. which is applicable to new saw-mills. It is submitted by the petitioners with reference to documents that theirs' sawmills are existing for more than a decade and licenses are renewed from time to time. While granting licence and also renewal of licences from time to time by the competent authority, it discloses that they situate within the City Corporation limits of Belgaum City or Municipal Area or Panchayat Area, as the case may be, which is saved by II Proviso of Rule 163. Rule 163 of the Rules is applicable for control of private saw pits, saw mills or any other sawing contrivances. Further it clarifies that no new saw mills or any other sawing contrivances shall be established within the limits of or within an aerial distance (crow-fly distance) of ten kilometers from the limits of any reserved forest, protected or district forest etc., The Rule itself restricts only for establishing a new saw mill. Sub-Rule (2-A) and first and second proviso thereof makes it clear that it applies to new saw mill and not applicable to the present case.

7. In the judgment reported in 1971(2) My.L.J 511 (C Rangappa & others vs., State of Mysore & another) in which the judgment of the Hon'ble Supreme Court reported in The Central Bank of India Vs. Their Workmen, is referred, it is stated that the expression "establish a saw mill" in Rule 163 does not include continuing to operate it after it has been set up on a sound, stable or permanent basis". In sub-rule (2) of Rule 163, it is stated they are made applicable to new saw-mills, saw-pits and other sawing contrivance. When the Rule expressly excludes the saw-mills which are already established long ago and have been continued the business and renewal of licence is done from time to time, for them either the first or second proviso are not applicable. When the Rule

expressly excludes the existing saw mills, the circulars issued by the Principal Chief Conservator of Forest, Bangalore it goes contrary to the Rules. When the statute or Rules are in force, there shall not be any Circulars running contrary to the said provisions.

8. The Hon"ble Supreme Court in held in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, that, "where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

9. In Babu Verghese and Others Vs. Bar Council of Kerala and Others, . Para-31 of the said judgment reads as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch D 426), which was followed by lord Roche in Nazir Ahmad vs. EmperorAIR 1936 253 (Privy Council) who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

10. In the light of the judgment referred to above, it is clear that a statute which is in force is applicable in total not in piece, specially where the officers who are incharge of helm of affairs, they have to follow the provisions from which they are governed, unless there are provisions enabling the officers to by-pass the provisions, by way of discretion vested in them. Rule 163 of the Rules is applicable to new saw mills and provisos 1 & 2 further clarifies that it could not have been made applicable to the petitioners since theirs are existing saw mills within the Municipal/Corporation/Panchayat area and the case of the petitioners are saved. This aspect has not been examined by the Deputy Conservator of Forest while canceling the renewal of licence.

11. It is true that obtaining licence or renewal of licence is not a fundamental right or a constitutional right of any person, it is only a statutory right. Where a person satisfies the provisions of the statute, then he is entitled for the licence or renewal thereof. Such a right shall not be deprived except by due process of law as otherwise it amounts to violation of Article 14 and 19(1)(g) of the Constitution of India. When licence was granted, it constitutes a statutory right since the petitioners are entitled to carry on the business and when it is sought to be canceled by the authority, then before refusal of renewal, they have to be provided an opportunity of hearing. Cancellation of licence or rejection of application for renewal of licence without hearing the affected parties is an arbitrary action violative of Article 14 . Hence the impugned order refusing renewal suffers and accordingly impugned orders are liable to be quashed.

12. It is to be noticed that the circulars are issued contrary to the statutory provisions and hence they are also liable to be quashed.

Accordingly, these writ petitions are allowed. The impugned orders and the notifications/Circulars are hereby quashed. The respondent authorities are directed to consider the applications for renewal of licences of the petitioners and pass orders in accordance with law. The petitioners are permitted to place materials in support of their renewal applications and also the contention that their saw mills are situated within the Corporation/Municipal area.