

(2003) 02 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5903 of 1999

S. Nabi Rasool

APPELLANT

Vs

The Conservator of Forests Kurnool Circle and Others

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 2, 29(4), 44, 59, 68

Andhra Pradesh Forest Produce (Storage and Depot) Rules, 1989 — Rule 11, 11(3), 5

Citation : (2003) 2 ALD 720 : (2003) 5 ALT 113

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : C. Kodandaram, for the Appellant; GP for Forests, for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner is a licensee of a saw mill. On 31.10.1998, the 2nd respondent conducted a surprise check on the petitioner's saw mill and verified the records. During the inspection, the 2nd respondent found that some species of timber logs were allegedly not entered in the saw mill timber account register and that some timber species logs entered in the saw mill register on verification were found to be not present in the yard. Again on 1.11.1998, presumably on the directions of the 2nd respondent, the 3rd respondent inspected the petitioner's saw mill and submitted a report furnishing the stock position. After verifying the stock position, the 2nd respondent came to a conclusion that there is a huge disparity between the produce available on the ground and stock shown in the saw mill timber account. Therefore, the 2nd respondent issued the impugned memo dated 28.11.1998 directing the 3rd respondent to collect a compounding fee of Rs. 3,00,000/- from the petitioner on the ground that the value of the timber found to be at variance comes to rupees three lakhs. The 3rd respondent by notice-dated 1.12.1998 advised the petitioner to pay the said amount within three days. Assailing the order of the 2nd respondent dated 28.11.1998, the petitioner filed the writ petition.

2. While admitting the writ petition, this Court passed interim orders subject to

the petitioner depositing half of the demanded amount within eight weeks. The petitioner carried the matter by way of appeal. A Division Bench of this Court in Writ Appeal No. 1001 of 1999, to which I was a member, by order dated 18.8.1999 modified the interim orders of the learned single judge staying the impugned order subject to the petitioner paying an amount of Rs. 10,000/-. The Division Bench observed in the said order as under:

"Nothing has been pointed out before us that the amount has been assessed and then compounding fee has been imposed. Apart from this, no order has been passed confiscating or seizing the produce.

The question whether seizure/confiscation of the produce was there or not and whether the authority was well within its jurisdiction to compound and whether or not the alleged amount is compounding fee etc., will be determined in the writ petition and we are not inclined to express any opinion on the same."

3. The learned counsel for the petitioner raised two submissions. Firstly, he would contend that the petitioner has not committed any Forest Offence and therefore it is not competent for the respondents to impose the compounding fee of rupees three lakhs. Secondly and alternatively, it is submitted that as per Rule 11(3) of the A.P. Forest Produce (Storage and Depot) Rules, 1989 (for short "the Storage and Depot Rules"), the 2nd respondent is competent to impose penalty of Rs. 10,000/- only subject to recording a finding that the petitioner has contravened the rules after giving opportunity of being heard to the petitioner. The 2nd respondent has followed the relevant law more in breach and therefore the order is unsustainable.

4. Learned Government Pleader for Forests, Sri G. Jayaprakash Babu submits that as there is huge variation in the ground stock and the stock registered in the timber registers, the Divisional Forest Officer was justified in imposing the fine u/s 59 of the A.P. Forest Act, 1967 (hereinafter referred to as "the Act").

5. Section 59 of the Act deals with compounding of offences. It lays down that any Forest Officer specially empowered by the State Government may compound any forest offence subject to the rules laid therein and also subject to A.P. Forest Offences (Compounding & Prosecution) Rules, 1969 (hereinafter referred to as "Compounding & Prosecution Rules." "Forest Offence is defined in Clause (e) of Section 2 as to mean an offence punishable under the Act or any rule made thereunder. It is not denied that Section 2, 29(4), 44 provide for offences and penalties under the Act. The contravention alleged in the present case is not treated as an offence. The learned Government Pleader is not able to bring to my notice any provision of law making the contravention of not entering the actual stock in the timber registers an offence under the Act. When no contravention can be treated as an offence under the Act, as per the provisions noticed hereinabove or any other provision, Section 59 of the Act as well as Compounding & Prosecution Rules have no application.

6. Different sets of rules have been made by the Government in exercise of its

powers u/s 68 of the Act. All these rules empower the competent authority, usually, the Divisional Forest Officer to impose penalty/fine for contravention of the conditions of licence or in some cases the rules themselves. A saw mill licensee is required to maintain two separate registers prescribed in Form 3A and Form 3B of Storage and Depot Rules. Rule 11 of the Rules deal with cancellation of any licence for any contravention of the rules and the conditions of licence. A licence maybe cancelled for any contravention of the Act or any rule after giving the licensee an opportunity of being heard. In case, after recording a finding that the provisions of the Act or Rules have been contravened after giving an opportunity of being heard, the option is left to the Divisional Forest Officer either to cancel the licence or to impose penalty not exceeding a sum of Rs. 10,000/- or upto the extent of security deposit. Be it noted that under Rule 5, a licensee is required to make a deposit of an amount ranging from Rs. 500/- to Rs. 5,000/- for due observance of the Act and the Rules. Be that as it may, the fine imposed under sub-rule (3) of Rule 11 cannot exceed Rs. 10,000/-.

7. A reading of the impugned order dated 28.11.1998 would show that the 2nd respondent imposed compounding fee of rupees three lakhs for alleged huge disparity between the produce available and the quantity shown in the saw mill timber account. No offence as alleged to have been made is mentioned in the impugned order. Therefore, the amount of three lakhs cannot be treated as compounding fee and it can only be a penalty under sub-rule (3) of Rule 11 of the Storage & Depot Rules, in which event, imposing rupees three lakhs as penalty is illegal and cannot be sustained. It is axiomatic that when the authorities are entrusted with powers under a statutory enactment, such powers are to be exercised strictly in accordance with the provisions of the statute and not at all. The principle which I described as a Taylor Principle in my own judgment in K.B. HUSSAIN REDDY vs. EXECUTIVE ENGINEER, M.I.DIVISION, NANDYAL & OTHERS 2003(1) ALD 435 was first laid down in TAYLOR v. TAYLOR & OTHERS 1875 (1) Ch.D 426 . The said principle was followed by the Privy Council and the Supreme Court too. A reference may be made to AIR 1936 253 (Privy Council); Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , State of Gujarat Vs. Shantilal Mangaldas and Others, , Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, and Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, and The Govt. of A.P. and Another Vs. Hanumanth Kali Vara Prasad Babu Chemicals (P) Ltd. and Another, .

8. In H.K.V.P.B. Chemicals case cited supra-8, the principle was applied by a Division Bench of this Court in relation to the compounding fees imposed under A.P. Excise Act, 1968 and held that at the relevant time it was not permissible for the excise authorities to impose compounding fee exceeding Rs. 5,000/-. The same principle is equally applicable while imposing penalty also. The 2nd respondent could not have validly imposed a fine of rupees three lakhs under Rule 11(3) of the Storage & Depot Rules.

9. As noticed hereinabove, the Division Bench in W.A. No. 1001 of 1999 also observed that no order was made confiscating or seizing the produce or sanctioning prosecution for an offence. Therefore, compounding fees itself is not warranted. It is also not denied that pursuant to the order of the Division Bench, the petitioner already paid an amount of Rs. 10,000/- towards the penalty.

10. It is not denied that for about two weeks the petitioner did not maintain proper records due to absence of his clerk. Therefore, this Court considers it appropriate to declare the impugned order passed by the 2nd respondent as valid subject to condition that the fine imposed shall be restricted to Rs. 10,000/-, which the petitioner has already paid.

11. The writ petition is disposed of subject to the above observations. No costs.