

(2015) 06 KAR CK 0108

In the Karnataka High Court

Case No : Writ Petition No. 55005/2013 (GM-FOR)

Srilatha M. Hegde

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Citation : (2015) 4 KarLJ 404

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

Bench : Single Bench

Advocate : Ravindra Kolle, for the Appellant; R.B. Sathyanarayana Singh, AGA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.

1. The petitioner is before this Court seeking for issue of mandamus to direct the licensing authority -Respondent No. 5 to issue a Saw Mill license to the applicant/petitioner forthwith, as per the findings given by the Appellate Authority as at Annexure "F" pursuant to the order passed by this Court in W.P. No. 41780/2004.

2. The petitioner is the Legal Representative of P. Mahim Kumar Hegde, who during his lifetime had applied for the grant of a license on 15.12.1996, to establish a Saw Mill in terms of Rule 163 of Karnataka Forest Rules, 1969. The Saw Mill was sought to be established in the name and style of "Ratna Wood and Polishing Industries" in Sy. No. 13-1B of 80 Badagabettu Village in Udupi Taluka. Pursuant to the said application since the matter had not been considered, the petitioner's husband was before this Court in W.P. No. 7885/2000, which was disposed of on 4.7.2000 with a direction to the authority concerned to re-examine the request of the petitioner for "No Objection Certificate". Pursuant thereto, the proceedings have commenced. However, since there was no conclusion in the matter, the petitioner's husband was once again before this Court in W.P. No. 41780/2004. The said petition was disposed of on 9.11.2004,

whereby the matter was remitted to the Conservator of Forests, Mangalore Circle, Mangalore to consider the appeal of the petitioner. Ultimately, while granting license, the clearance of the State Empowered Committee to be placed before the Central Empowered Committee would have to be made since ultimate decision would have to be taken based on the clearance given by the Central Empowered Committee. While considering the case of the petitioner along with several other applicants, an order dated 27.4.2005 was made to forward the papers to the Central Empowered Committee for consideration. The State Empowered Committee through its proceedings had prepared a list which includes the name of the Petitioner's Industry that is Sl. No. 65. Considering the fact that it is away from the required distance of 10.2 kms from the Reserve Forest a recommendation was made. The Central Empowered Committee by its communication dated 24.7.2013 has granted its concurrence for issue of license to 65 wood-based industries established on the basis of the No Objection Certificate issued by the Forest Department subject to the conditions imposed therein namely., the Karnataka Forest Department will verify that none of the units were established after 30th October 2002/granted No Objection Certificate after 30th October 2002 and the next condition is that the units are not located in area where establishment of new unit is not permissible.

3. Insofar as the distance of the petitioner's unit being away from the Reserve Forest there appears to be no serious dispute. The contention on behalf of the petitioner is that the date for establishment of the petitioner unit shown as 31.1.2003 is not justified since the said date on which the NOC was issued is due to the folly of the respondents themselves. In that regard, it is contended that the date on which the petitioner was entitled for issue of NOC is 2.8.2001 and therefore if the said date is kept in view, the issue of NOC in the case of the petitioner would be prior to 30.10.2002 and as such the first condition as indicated by the Central Empowered Committee would also stand satisfied. It is in that view contended that there is no scope for the respondents to re-examine the matter except to take note of these aspects and issue the license. To refer to obligation of the statutory authority in performance of duties, the learned Counsel for the petitioner has relied on the order dated 9.9.2003 passed in W.P. No. 3251/2001 (GM-FOR).

4. Learned AGA with reference to the objections filed to the instant petition and also the file maintained in the office contended that the notice dated 24.10.2013 was issued to the petitioner calling upon to appear and furnish particulars to fulfill the conditions imposed by the Central Empowered Committee. The petitioner having appeared before the Authority, through a Counsel had sought time to produce the documents. Thereafter, the petitioner has not taken any steps to produce the particulars. Learned AGA would therefore submit that the action as required to be taken in law would be completed and thereafter appropriate orders would be passed.

5. The issue on which the instant petition presently revolves is with regard to the

compliance that is required to be made relating to the condition indicated in the letter dated 24.7.2013 of the Central Empowered Committee. Though the learned Counsel for the petitioner contends that no further requirement is there on the part of the respondents to examine the matter, I am of the view that before a decision is taken either to issue a license or to reject the application certainly the competent authority/relevant respondent would have to pass an appropriate order by taking into consideration, the material in respect of the applicant to establish that the unit was established or NOC was issued prior to 30.10.2002. In the instant case also, such consideration is required. In that regard, the respondents have already taken steps by issue of notice dated 24.10.2013. Though as contended by the learned Counsel for the petitioner, the respondents themselves would have to satisfy themselves with regard to the establishment/issue of NOC prior to 30.10.2002, any material relied upon by the petitioner certainly would have to be produced by the petitioner and thereafter a consideration would be made. The petitioner is no doubt contending that the relevant date on which NOC should have been issued in a normal course was on 2.8.2001. This aspect of the matter arising from the records is also to be examined by the respondents. Prima - facie, the contention as put forth by the petitioner that in several other cases, such consideration is made as pointed in the order dated 27.4.2005 would indicate that infact the petitioner was entitled for an issue of NOC on 2.8.2001, the date on which the decision was taken. Therefore, this aspect of the matter is also to be kept in view by the respondents and in that light, a consideration has to be made pursuant to the direction issued by the Central Empowered Committee. The said decision in any event shall be taken in an expeditious manner but not later than eight weeks from the date on which a copy of this order is furnished to the respondents.

6. In terms of the above, the petition stands disposed of.