

(2010) 07 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22750 of 2000

Yogeshwara Timber Depot

APPELLANT

Vs

The Conservator of Forest, The Divisional Forest Officer and
The Principal Chief Conservator of Forests, Government of
Andhra Pradesh

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Andhra Pradesh Forest Produce (Storage and Depot) Rules, 1989 — Rule 11
Constitution of India, 1950 — Article 226

Citation : (2010) 07 AP CK 0092

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant; G.P. for Forests, for the Respondent

Final Decision : Allowed

Judgement

Noushad Ali, J.—Cancellation of Saw Mill and Timber Depot licence of the petitioner vide orders dated 05-07-1999 in Rc. No. 1469/99/S4 passed by the second respondent Divisional Forest Officer, Khammam confirmed in Appeal by the first respondent - Conservator of Forest, Khammam vide orders dated 02-11-2000 in Rc. No. 555/90/M5, is under challenge in this Writ Petition.

2. Earlier, the second respondent cancelled the licence by proceedings in Rc. No. 1044/97/S2, dated 14-11-1998. The said order was passed without notice, to the petitioner. The petitioner challenged the said order in W.P. No. 34205 of 1998. This Court holding that no notice was given to the petitioner before cancelling the licence, which is mandatory under Rule 11 of the A.P. Forest Produce (Storage and Depot) Rules, 1989 (for brevity "the Rules, 1989") quashed the order reserving liberty to issue appropriate: notice and pass orders after providing an opportunity of hearing to the parties concerned.

3. The second respondent, thereupon served a show cause notice Rc. No. 1044/S2/94, dated 06-01-1999 on the petitioner, alleging that a permit bearing No.

172515, Book No. 3451/97, dated 29-11-1997, issued to one P. Prabhakar, resident of Khammam, whereunder he purchased timber from the Government Timber Depot, Yellandu, was found tampered showing excess quantify as 3.538 CMT against 0.070 CMT actually sold under the said permit, The petitioner was called upon to show cause why its Depot licence should not be cancelled under Rule 11(i) of the Rules, 1989. The relevant portion of the show cause notice is as under:

You have accepted the illicit timber brought through the tampered permit for cutting in your saw mill and timber depot and colluded with the smuggling activity, by cutting the illicit timber, thus violating the Saw Mill and Timber Depot Storage Rules. Had you taken sufficient care to verify the genuineness of the timber with reference to the permit and lot register copies and also hammer marks as described in the permit before cutting the timber you yourself could have un-earthed, the illicit nature of the timber brought to your saw mill for cutting. You have failed to do so and colluded with the smugglers, by accepting illicit timber and cutting it in your sawmill and thus violating the provisions of A.P. Forest Act, 1967 and the various rules made thereunder. You are therefore directed to explain as to why your depot licence should not be cancelled u/s 11(i) of the A.P. Forest Produce (Storage and Depot) Rules 1989 issued in G.O.Ms. No. 100 EFS and T (For-III), dated 17-07-1998, permanently besides taking legal action for the above irregularities, committed by you. Your explanation should be submitted within fifteen (15) days or receipt of this notice. Failing which, action will be taken according to the merits of the case and available records.

4. The petitioner responded to the show cause notice and filed an explanation, dated 18-01 -1999, which did not find favour with the second respondent. The second respondent once again cancelled the licence by orders, dated 05-07-1999. The appeal preferred against the said order to the first respondent herein was also dismissed by orders, dated 30-07-1999. The petitioner challenged the said order in W.P. No. 16818 of 1999. This Court holding that the order in appeal was non-speaking, disposed of the Writ Petition by orders dated 06-07-2000 and directed the first respondent to reconsider the matter on merits after giving a personal hearing to the petitioner.

5. in pursuance of the orders of this Court in W.P. No. 16818 of 1999, dated 06-07-2000 the first respondent reconsidered the appeal and rejected by orders dated 02-11-2000. The present Writ Petition arises out of the said orders of the respondents 1 and 2.

6. The learned Counsel Sri P. Veera Reddy appearing on behalf of the petitioner would submit that the petitioner is only a miller and undertakes job work entrusted by the parties for sawing and cutting the timber. The petitioner is authorized to do so and also to store the limber under a licence issued under the A.P. Forest Produce (Storage and Depot) Rules, 1989. The petitioner never indulged in any irregularity or mischief during the entire span of its business tenure. The counsel would submit that one, P. Prabhakar brought logs under

Permit No. 172515, Book No. 3451/97, dated 29-11-1997 and entrusted for cutting into sizes. Logs were purchased by Prabhakar from the Government Timber Depot, Yellandu and transported by him under a transit permit. The petitioner has nothing to do either with the purchase of the timber at the depot nor is he concerned with the transit. He accepted the job work on production of the aforesaid permit and redelivered the material to Prabhakar after the job work. The counsel would submit that the respondents without any basis and without any material against the petitioner cancelled the licence. He would further submit that the material on record as well as the statements of the concerned officers recorded in appeal were not looked into by the first respondent. The first respondent being an appellate authority, is under an obligation to consider the entire material on record which the first respondent failed to do. The order in appeal is perfunctory and arbitrary.

7. This Court in judicial review under Article 226 of the Constitution of India does not normally interfere with the assessment of facts. However, the Court may do so where the existence of a set of facts is a condition precedent to the exercise of a power and when the decision-maker misunderstood the facts upon which the decision depends or where the evidence, taken as a whole, is not reasonably capable of supporting a finding of fact. Similarly this Court may enquire whether the conclusion of an authority, on which the impugned order rests, is not supported by any evidence at all and declare such order, if the Court is satisfied, that the said order is not based on any evidence at all.

8. If the power has been exercised on a non-consideration or non-application of mind to the relevant facts, the exercise of power will be recorded as manifestly erroneous. If the power be it legislative or administrative, is exercised on the basis of facts which do not exist and which are apparently erroneous, such exercise of power will stand vitiated. The Apex Court in *State of U.P. and Another Vs. Johri Mal*, held that while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. Elaborating the principle, the Apex Court observed as follows:

It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can

reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law, Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.

The Apex Court in the said judgment, also referred to a case in Counsel of Civil Services Unions v. Minister of Civil Service 1985 AC 374 wherein, it was held as follows:

If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.

9. Having regard to the above principles, the contentions raised against the impugned orders are required to be examined.

10. It is not in dispute that the timber was purchased by one P. Prabhakar under a permit No. 172515 Book No. 3541/97, dated 29-11-1997. It is also not in dispute that the said permit was issued from the office of the Government Timber Depot, Yellandu. Admittedly, one P. Prabhakar of Khammam, was the purchaser of the timber covered by the said permit and he entrusted the job work to the petitioner to cut the logs into sizes.

11. The case of the respondents is that during October 1998, a general complaint was received that saw-mills functioning at Khammam were indulging in clandestine business. Thereupon, the Divisional Forest Officer, Khammam, conducted enquiry and during the course of such enquiry, it was found that some permits issued from the Government Timber Depot, Yellandu, were found to be tampered. One Sri Lakshmi Narayana, who was working as Technical Maistry in the said Government Timber Depot, was the key person involved in such activities. The involvement of the said Technical Maistry is specifically pointed out in the counter affidavit filed by the respondents. It has been pointed out therein that the said Maistry was the brain behind the clandestine activities and he gave a confessional statement admitting his involvement at the behest of saw-millers functioning at Khammam. However, he did not name any mill specifically. Since the permit issued to Prabhakar was one such tampered permit, drawing interference of the culpability of the petitioner, show cause notice referred hereinbefore was issued.

12. It is therefore to be examined whether the petitioner had any role in the entire episode and whether there is any material on record to hold him culpable.

From the principles laid down by the Apex Court noted above, this Court can enquire whether there was any material against the petitioner that he was also involved and whether the respondents considered the said material and reached a right conclusion.

13. A perusal of the show cause notice, dated 06-01-1999, extracted herein above, makes it evident that the petitioner was charged with accepting illicit timber brought through the tampered permit. The petitioner was charged for lack of sufficient care to verify the genuineness of the timber with reference to the permit and the register copies. This is the specific inceptual allegation against the petitioner. The petitioner asserted that he was no-way concerned either with the purchase or with the permit and he was no-way involved in the alleged tampering of the permit. He relied on the permit dated 29-11-1997 produced by P. Prabhakar and undertook the job work only under the permission dated 01-12-1997 of the 2nd respondent. He further asserted that the quantify of measurement of sizes and the resultant waste material was personally inspected by the Deputy Range Officer, Erlapudi, who on being satisfied, issued Lifting Permission No. 160779/3216, dated 05-12--1997. On this assertion, the 1st respondent while reconsidering the appeal, as per the orders of this Court in W.P. No. 16818/1999, dated 06-07-2000, conducted enquiry and examined the concerned officers as witnesses. The statements of those officers are placed before this Court for perusal.

14. Sri Zaheer Ahmed (FRO) in his cross-examination, inter alia, stated that he inspected the material before conversion as per the instructions of F.R.O., Tharlada and at the time of inspection, he had no doubt about the genuineness of the material. He permitted the conversion only after satisfying himself as per the orders of the D.F.O. and that he did not entertain any doubt about the genuineness of the permit. He also admitted that after conversion, he issued T.T. permit in favour of Prabhakar on the basis of which the material was lifted by him from the mill. From the statement of the said Officer it is manifestly clear that the timber was transported under a permit and the petitioner undertook the conversion and redelivered the material to the owner P. Prabhakar duly under valid permissions. Hence, the statement of the 2nd respondent belies the allegations against the petitioner made in the show cause notice.

15. Sri S. Bala Krishna, I.F.S., the then D.F.O., Khammam, who passed the orders of cancellation of permit, in his cross-examination, inter alia, said:.

Cancellation order was issued on the basis of a Forest Case booked against the saw mill and on the basis of a report of D.F.O., F.S.P., Khammam, dated 04-11-1998 and the P.O.R. and panchanama filed before him by the F.R.O., Thollada.

In his further cross-examination, inter alia, he stated:

I did not find any evidence to the fact that the saw mill owner is involved in forging the permit in question....

After sawing the material the permit was issued for the sawn material by Dy. R.O., Erlapadu.

16. Sri P. Ranga Raju, D.F.O., F.S.P., Khammam, on whose report action was initiated against the petitioner, in his cross-examination, inter alia, stated:

On the face of it, it is not possible to know that the original permit was forged one. I have verified the register of check post. As per the check post register whatever genuine material was sold was only entered in the check post register.

He further stated

Whether the owner or his agent of Yogeswar Saw Mill was involved directly in the tampering of permit or not was not verified by me. This part of investigation was done by D.F.O., Khammam. At that time Sri S. Bala Krishna, I.F.S. was working as Director, Khammam.

The aforesaid statements of the Officers, who were concerned with the impugned cancellation of licence, are crucial and material.

17. From the statements of each of the aforesaid officers, it cannot be concluded that the petitioner was involved in the episode. On the other hand, the material is otherwise. The 1st respondent omitted to consider these statements apparently to gloss-over the real issue. The 1st respondent himself has observed that the Technical Maistry, while confessing his connivance on some saw-millers, did not specify the names of such millers.

18. The respondents, however, sought to justify their action in cancelling the licence on the ground that a criminal case in C.C. No. 705 of 1999 has been registered against the petitioner and unless the petitioner proves his innocence, he is presumed to have connived in the clandestine activity. The respondents also presume that the petitioner is guilty on the ground that the petitioner did not choose to examine the Technical Maistry deliberately in order to avoid being implicated. The stand taken by the respondents is liable to be rejected as irrational. No inference as to the guilt of the petitioner can be legitimately drawn merely on the ground that criminal case has been booked against him and that the Technical Maistry was not examined. The respondents having charged the petitioner, it is their duty to examine any witness including the Technical Maistry and it is no part of the duty of the petitioner to examine him.

19. The observation of the 1st respondent that the statement of the Technical Maisfry, since recorded by the Divisional Officer is sacrosanct, is liable to be rejected since such statement does not appear to have been recorded in the presence of the petitioner. The allegation that the petitioner did not maintain the records did not constitute part of show cause notice or the proceedings taken subsequent thereto. The conclusion reached by the 1st respondent as to the guilt of the petitioner is not based on any acceptable evidence/material on record. The 1st respondent omitted to consider the material evidence on record (statements of the concerned officers) which would have absolved the petitioner from the

charges. Therefore, it cannot be held that the petitioner is involved in the alleged tampering of permit and he has violated any of the Rules. It is therefore be held that the orders dated 05-07-1999 in Rc. No. 1469/99/S4 passed by the 2nd respondent, Divisional Forest Officer., Khammam, confirmed in Appeal by the 1st respondent, Conservator of Forest, Khammam vide orders dated 02-11-2000 in Rc. No. 555/90/M5, are unsustainable and liable to be set aside.

20. The writ petition is accordingly allowed. There shall be no order as to costs.