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GOVERNMENT OF KERALA

Abstract

Revision Petition as per Rule 20 of the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012 filed by Sri. P.G.Thomas Tharakan, Managing Director, Nilambur Good Wood Industries Ltd., Chemmaram, Naduvath P.O., Nilambur Taluk, Malappuram District- Disposed of- Orders issued.

FOREST & WILD LIFE (B) DEPARTMENT

G.O.(Rt)No.8/2021/F&WLD Dated,Thiruvananthapuram, 19/01/2021

- Read 1) Order No.G1-480/2019 dated 9/3/2020 of the Divisional Forest Officer, Nilambur South Division,Nilambur..
- 2) Order No. M.2321/2020 dated 24/6/2020 of Chief Conservator of Forests, Eastern Circle, Palakkad.
- 3) Revision petition dated 27/7/2020 filed by Sri.P.G.Thomas Tharakan, Managing Director, Nilambur Good Wood Industries Ltd., Chemmaram, Naduvath P.O., Nilambur Taluk, Malappuram District.
- 4) WP(C) No.21066/2020 filed by Sri.P.G.Thomas Tharakan before the Hon'ble High court.
- 5) Judgment dated 07/10/2020 of the Hon'ble High Court in WP (C) No.21066/2020
- 6) Stay Petition dated 28/10/2020 filed by Sri. P.G.Thomas Tharakan before Government
- 7) Government Letter No.96/B2/2020/F&WLD dated 17/11/2020.

- 8) Lr. No. FC6-1687/2020 dated 10/11/2020 of Principal Chief Conservator of Forests (Forest Management) & Nodal Officer, Forest Headquarters, Thiruvananthapuram.

ORDER

The Hon'ble High Court of Kerala, in its judgment read as 5th paper above, directed the 1st Respondent (i.e. Government) to consider and pass orders on Exhibit P5 Revision Petition, regarding grant of license to sawmill, in accordance with law, as expeditiously as possible, within a period of two months from the date of receipt of a copy of the judgment. In the judgment, the Hon'ble High Court also directed that in case the Petitioner submits an application for stay, that shall also be considered and orders shall be passed on it, within a period of three weeks from the date of receipt of the judgment.

2) Subsequently, the Revision Petitioner submitted the application for stay, read as 6th paper above. Government examined the matter in detail and rejected the stay application, as per the letter read as 7th paper above.

3) In view of the directions issued by Hon'ble High Court, to dispose of the Revision Petition (Exhibit P5), within time limit, the Revision Petitioner was heard on 30.11.2020.

4) The Revision Petitioner along with his Counsel was heard, in person. The Divisional Forest Officer, Nilambur was also heard.

5) During the hearing, the Counsel for the Revision Petitioner submitted that the 'Nilambur Good Wood Industries' is a Private Limited Company doing the business of Rubber Wood Industries since 03/04/1995 and continued its work up to 17/07/2019, with the license issued from the Mampad Grama Panchayath from time to time. According to the Revision Petitioner, Mampad Grama Panchayath issued the D&O license (License No.7/1995-96 dated 19/06/1995), as per Section 96, 97, 98 and 129 of the Kerala Panchayath Raj Act,1994 and the Rules issued thereunder, on the basis of the 'No Objection Certificate' No.A2-6348/94 dated 16/12/1994 issued by the Forest Department. On 17/07/2019, the Divisional Forest Officer, Nilambur issued Notice No.G1-1290/2019 and directed the petitioner to close down the Industrial Unit alleging that the Company had no valid license from the Forest Department. In view of

the above Notice, the Panchayath refused to renew its license beyond 17/07/2019. The Revision Petitioner added that he did not apply for license from Forest Department under the impression that the license issued by Panchayath was sufficient and no separate license from Forest Department was required. In view of the above situation, the Revision Petitioner filed application for 'No Objection Certificate' before the Divisional Forest Officer, Nilambur. But the same was rejected as per the Order read as 1st paper above. Aggrieved by the above Order, the Revision Petitioner filed Appeal before the Chief Conservator of Forest, Eastern Circle, Palakkad, and that was also rejected vide Order read as 2nd paper above. Simultaneously, the Revision Petitioner filed an Application for new license, in Form IB, as per Rule 6(2) of the Kerala Forest (Regulation of Sawmills and Other wood based Industrial Units) Rules,2012. The Application was disposed of by the Divisional Forest Officer, Nilambur, as follows:-

" ... അതുപ്രകാരം ശ്രീ . തോമസ് തരകൻ Form No.1 B - യിൽ പുതിയ സ്ഥാപനം തുടങ്ങാനാണ് അപേക്ഷ സമർപ്പിച്ചത്. ആയത് റബ്ബർ തടി ലഭ്യതാ റിപ്പോർട്ട് ലഭ്യമാക്കാത്തതുകൊണ്ട് താൽക്കാലികമായി ലൈസൻസ് നൽകാൻ കഴിയില്ല എന്നാണ് അറിയിച്ചിട്ടുള്ളത്. അതുകൊണ്ടുതന്നെ ശ്രീ. തോമസ് തരകൻ ബഹു. ഹൈക്കോടതിയിൽ സമർപ്പിച്ചിട്ടുള്ള എക്സിബിറ്റ് 8 ൽ നടപടി സ്വീകരിച്ചിട്ടുണ്ട് എന്ന് കാണാം.

... അതിനുപകരം ടിയാൻ പുതിയ സ്ഥാപനം നടത്താനുള്ള അപേക്ഷാഫോമായ Form No. 1 B- പ്രകാരമാണ് അപേക്ഷിച്ചത്. അതുകൊണ്ടാണ് ഈ ഓഫീസിൽ നിന്നും റബ്ബർതടിയുടെ ലഭ്യതാ റിപ്പോർട്ട് ലഭിച്ചതിനുശേഷം മാത്രമേ താങ്കളുടെ അപേക്ഷ പരിഗണിക്കൂ എന്ന് ടിയാനെ അറിയിച്ചത്."

6) The Revision Petitioner argued that as per Rule 7(1), the above Application should have been disposed of within a period of three months but, the way in which the Divisional Forest Officer, Nilambur, disposed of the application cannot be considered as 'disposal' in the true sense of law.

7) The Divisional Forest Officer, Nilambur submitted that Government issued the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012 and subsequently issued the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Amendment Rules, 2015 and these being Special Rules, the Revision Petitioner ought to have applied for license, as per Rule 6 (1) of the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012, within a period of six months from 19/04/2012 or, subsequently, within a period of six

months from 09/09/2015, as per Sub-Rule (1A) of Rule 6. But since the time limit stipulated in the Rules expired on 18/10/2012 and, subsequently, on 08/03/2016, no License could be issued. According to him, the Revision Petitioner cannot take a defense that he was unaware of the Rules issued by Government. He added that the Panchayath ought to have renewed the license only on receipt of the license issued by the Forest Department.

8) The Counsel for the Revision Petitioner submitted that they are not concerned with the renewal of license and are **only concerned with the improper disposal of the Application filed under Rule 6 (2) of the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012.**

9) In view of the above, the only matter which requires consideration is whether the disposal of the Application for new license, as per the Rule 6 (2), by the Divisional Forest Officer, could be treated as '**proper disposal**'.

10) 'Disposal' of Application, as per the usual convention of law, is either '**Allowed**' or '**Rejected**'. No via media way of disposal, as was made by the Divisional Forest Officer, is possible as per the usual convention of law.

11) The Divisional Forest Officer submitted during the hearing that the non availability of 'Wood Balance Study Report' is the only impediment to issue new license to the Revision Petitioner. However, he was not sure when the 'Wood Balance Study Report' would be received.

12) The Revision Petitioner's case comes under Category 7 under Rule 9 (i.e. **Large scale industrial units using exclusively rubber wood for manufacturing products such as furniture, veneer, plywood and particle board--**).

Item No.(ii) of Category 7 states as follows:-

"Any unit under this Category which is started functioning after 30th October, 2002 will be given license only after assessing the availability of wood from all sources by the Advisory Committee and on satisfaction that adequate quantity of wood for the unit is available."

13) It is clear from the above provision that the license, as

per Rule 6(2), should be granted after assessing the availability of wood. In view of the circumstances that (i) the license, as per Rule 6(2), should be granted after assessing the availability of wood, (ii) the Application under Rule 6(2) should be disposed of within a period of 3 months, as per Rule 7(1), and (iii) the disposal was improper in view of the reason stated above, Government Order that the Divisional Forest Officer, Nilambur, shall consider the Application, afresh, and to dispose of it, properly, at the earliest.

(14) The Revision Petition is disposed of accordingly and, thereby, the direction issued by the Hon'ble H.C., vide its judgment dated 7/10/2020 in WP(C) 21066/2020, is complied with.

(By order of the Governor)

BINOD K

DEPUTY SECRETARY

The Advocate General, Kerala, Ernakulam (With covering letter).

Sri. P.G.Thomas Tharakan, Managing Director, M/s. Nilambur Good Wood Industries Ltd, Chemmaram, Naduvath.P.O, Nilambur Taluk, Malappuram District, Pin- 679 328.

The Principal Accountant General (Audit / A&E) Kerala, Thiruvananthapuram.

The Principal Chief Conservator of Forests & Head of Forest Forces, Forest Head Quarters, Vazhuthakkad, Thiruvananthapuram.

The Principal Chief Conservator of Forests (Special Afforestation & Nodal Officer), Forest Head Quarters, Vazhuthakkad, Thiruvananthapuram.

The Chief Conservator of Forests, Eastern Circle, Olavakode, Palakkad.

The Divisional Forest Officer, Nilambur South Division, Nilambur.

Law Department (Advice-D) Department (No.18635/Advice D2/2020/Law dated 23/12/2020.)

The Director, Information & Public Relation (Web & New Media) Department.

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Personal Assistant to Principal Secretary (Forest & Wildlife Department).