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7/1/20



GOVERNMENT OF KERALA

Abstract

Judgment in WP (C) No.8105/2019 dated 24/07/2019 filed by Sri.P.Vikraman, Proprietor, Kilithattil Wood Industries, Kalanjoor.P.O, Adoor before the Honourable High Court of Kerala -Complied with - Orders issued.

FOREST & WILD LIFE (B) DEPARTMENT

G.O.(Rt)No.5/2020/F&WLD Dated,Thiruvananthapuram, 05/01/2020

- Read 1) Revision Petition dated 24/04/2019 submitted by Sri.P.Vikraman before Government.
- 2) Lr. No. KN.C6-1480/13 dated 28/12/2018 of the Divisional Forest Officer, Konni.
 - 3) Order No. QL-703/2019 dated 30/03/2019 of the Chief Conservator of Forests, Southern Circle, Kollam.
 - 4) WP (C) No. 8105/2019 filed by Sri.P.Vikraman before the Honourable High Court.
 - 5) Judgment dated 24/07/2019 in WP (C) 8105/2019 of the Honourable High Court of Kerala.
 - 6) G.O (Rt) No.413/2019/F&WLD dated 10/10/2019.

ORDER

A Revision Petition was submitted by Sri. P. Vikraman, Proprietor, Kilithattil Wood Industries, Kalanjoor P.O, Adoor, before Government vide 1st Paper above with a plea to set aside the orders of the Licensing Authority (Divisional Forest Officer, Konni) vide letter read as Second paper above and Orders of the Appellate Authority (Chief Conservator of Forests, Southern Circle, Kollam) vide Order read as third paper above wherein the Licensing Authority rejected the application for renewal of the Sawmill License and the Appellate

Authority also rejected the appeal for renewal of his sawmill license. The interim relief sought for was to issue temporary license for conducting the wood based industry pending disposal of the Revision Petition.

2) WP C-8105/2019 was filed by Shri. P. Vikraman vide fourth paper above, with a plea to allow functioning of his sawmill during pendency of the W.P (C). Government was later impleaded in this case as Additional fifth Respondent. The case was disposed by the Honourable High Court vide judgment dated 24/07/2019 read as fifth paper above (received in Government on 26/09/2019), with a direction to Government impleaded as Additional fifth respondent, to consider and pass appropriate orders on Exhibit P17, (Revision Petition read as first paper above) by the petitioner against P16 order of the Chief Conservator of Forests (Southern Circle) Kollam (read as third paper above), with notice to the petitioner and after affording him an opportunity of being heard, strictly in accordance with law, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of the judgment. It was also ordered that the additional fifth respondent shall also consider the interim relief sought for in Exhibit P17 and pass appropriate orders, with notice to the petitioner and after affording him an opportunity of being heard, within a period of two weeks from the date of receipt of a certified copy of the judgment.

3) As per the judgment the Petitioner was heard by the Additional Chief Secretary (Forest & Wild Life Department) on 09/10/2019 and orders were issued vide GO (Rt) No. 413/2019/F&WLD dated 10/10/2019, rejecting the interim plea of the petitioner to issue temporary license as the sawmill was functioning

without sanction from the Forest Department, in violation of provisions of the Kerala Forest (Regulation of Saw Mills and Other Wood Based Industrial Units) Rules, 2012 and in violation of the provisions of the Kerala Forest Act, 1961 and directing that the functioning of the sawmill should immediately be stopped. Thus the part of the direction of the Honourable High Court vide judgment dated 24/09/2019, to consider the interim relief sought for in Ext P17, was complied with.

4) For complying with the second part of the Judgment the petitioner was heard by Additional Chief Secretary (Forest & Wildlife Department) on 19/12/2019. In the hearing, Petitioner Shri. P. Vikraman, The Chief Conservator of Forests (South Circle), Kollam, and Divisional Forest Officer, Konni from the Forest Department were present.

5) The arguments of the petitioner are as follows:

- i. On 13.03.2013, the Kalanjoor Grama Panchayath issued a stop memo to him. He approached the Honourable High Court of Kerala and filed WP C No.6537/13. The Honourable High Court directed the respondents, the Panchayath and Forest officials, to stop the implementation of stop memo until final orders are passed by the Forest Authorities in the application for granting NOC submitted by him.
- ii. On 28.12.2018, the DFO, Konni declined to issue NOC stating that OR No.3/97 registered on 29.04.1997 in the Padam Forest Station is pending and after the registration of the above, confiscation proceedings were initiated against him. However, he approached the District Court against the said confiscation and orders were issued in his favour and the same was challenged in CRP No.264/2017 which is now pending before the Honourable High Court.
- iii. On 17.06.2019 the Range Forest Officer, Naduvathumoozhi issued a reply under RTI Act stating that no further proceedings were initiated on OR 3 1997 registered on 27.07.1997 so far. It is also

stated that the OR 3/97 has not been referred.

- iv. Against the rejection of license / NOC, he filed a statutory appeal before the Chief Forest Conservator, South Zone, Kollam. Subsequently the DFO, Konni and the Kalanjoor Grama Panchayath issued stop memo. The appeal was also rejected by the appellate authority on 30.03.2019 stating that after the culmination of the proceeding in CRP No.264/2017, the authority will consider issuance of any license to him. He challenged the above by filing WP © No.8105/2019.
- v. Against the rejection of appeal, he filed statutory revision before the Government which is pending consideration. Upon filing revision, WP © No.8105/19 was disposed off with directions.
- vi. Upon hearing him, the revisional authority issued an interim order on 10.10.2019 directing him to close down the sawmill immediately. Against which he filed WP © No.28948/19, which was disposed of directing the revisional authority to consider and pass final orders on the revision untrammelled by the findings and discussions in the order rejecting the interim prayer.
- vii. Thereafter he has filed Crl. M. C No. 8996/2019 before the Honourable High Court of Kerala seeking to quash OR No.3/1997 of Padam Forest Station and all further proceeding there to. The Crl. MC is now pending before the Hon'ble High Court of Kerala.
- viii. The rejection of license / NOC to him holding that OR No.3/1997 is pending against him is highly illegal, arbitrary and unsustainable. OR No.3/1997 was registered on 29.04.1997 u/s 27 (1) d of the Kerala Forest Act. No further proceedings were initiated to prosecute any of the persons arrayed as accused in the above case. Any initiation of proceedings at this distant point of time is barred under Chapter XXXVI of the code of Criminal Procedure.
- ix. Regarding pendency of CRP No.264/17 before the Hon'ble High Court, it is submitted that against the confiscation he approached the District Court, Pathanamthitta by filing CMA No.1998. He also sought for a stay of the operation of the order No.KNC-1/254097 dated 11.02.1998. An interim stay was granted on 17.03.1998. Subsequently, the appeal was allowed in his favour and against

which CRP No.264/17 was filed and an interim order staying the order of appellate court was passed, which will not bar issuance of license NOC for conducting the sawmill which is running continuously without any break and the fact has been admitted by the Forest Department.

6) The Forest officials submitted that;

- i. The machinery of the M/s. Kilithattil Sawmill was involved in committing the offence in OR 3/1997 and were confiscated by the Authorised Officer and Divisional Forest Officer, Konni as per the provisions of section 61 (A) of Kerala Forest Act, vide order No.KNC1-2540/97 dated, 31.12.1997. It is submitted that the validity of any licence issued by any authority stands expired as on 31.12.1997, since the machinery used by the sawmill was confiscated by the Authorized Officer on 31.12.1997 due to the involvement in OR 3/97.
- ii. It is submitted that the petitioner has clearly declared repeatedly that the sawmill is still functioning illegally without any valid licence. As per Kerala Forest (Regulation of Saw Mills and Other Wood-based Industrial Units) Rules, 2012 Rule 21, "the Authorised Officer shall close down any sawmill or wood based industrial unit which has been found functioning without a valid licence".
- iii. The petitioner was a habitual offender involved in various forest cases in Konni Forest Division and violated the provisions of the Kerala Forest Act, 1961.
- iv. As per Rule 10 (3) (b) (iv) of the Kerala Forest (Regulation of Sawmills and other Wood-based Industrial Units) Rules 2012, an application for renewal of licence may be rejected if the applicant has violated any of the rules or provisions of the Kerala Forest Act, 1961. In this case the petitioner has violated the rule provisions in the following ways.
 - a) The application for renewal submitted after three months from the date of expiry of the period of licence.
 - b) The applicant has violated the rules and the provisions of the Kerala Forest Act, 1961 and the Wildlife (Protection) Act, 1972 and other enactments relating to protection of environment or conservation of biological diversity or rules

made thereunder.

7) On consideration of the facts and arguments put forward, Government have come to the conclusion that although no further progress has been made in the OR 3/1997, the machinery was confiscated at the time of filing of the OR, and the CRP 264/17 filed by Government against the release of the machinery to the petitioner is still pending. The Cri MC 8996/2019 filed by the petitioner, seeking to quash OR 3/1997 and its subsequent proceedings, is also still pending before the Honourable High Court. Hence, the innocence of the petitioner in the matter of violation of the provisions of the Kerala Forest Act has not been established so far. The petitioner also has cases registered against him in Konni Forest Division in the period up to 1997, and is considered a habitual offender by the Forest Department. The petitioner has admitted that his sawmill is functioning without any valid license since 1998, albeit on the basis of interim orders issued by the Honourable Courts. Hence, it is not possible to hold that the action of the Divisional Forest Officer, Konni in refusing NOC to the petitioner's sawmill is illegal or arbitrary, and the revision petition is rejected accordingly and thereby the Judgment of the Honourable High Court dated 24/07/2019 in WP © 8105/2019 is fully complied with.

(By order of the Governor)
DR.ASHA THOMAS IAS
ADDITIONAL CHIEF SECRETARY

To,

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

Sri. P. Vikraman, Proprietor, Kilithattil Wood Industries, Kalanjoor PO, Adoor, Pathanamthitta

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, Southern Circle, Vanasree complex, Chinnakkada, Kollam.

The Divisional Forest Officer, Office of the Divisional Forest Office, Konni Forest Division, Konni - 689 691.

The Secretary, Kalanjoor Grama Panchayath, Kalanjoor P.O, Adoor, Pathanamthitta - 689 694.

The Director, Information & Public Relation (Web & New Media) Department
Forest & Wildlife (PS) Department
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Reason Approved
Section Officer

Copy to: -

P.S to Hon'ble Minister (Forest & Wildlife Department)

P.A to Additional Chief Secretary (Forest & Wildlife Department).