



GOVERNMENT OF KERALA

Abstract

Forest and Wildlife Department - Judgment of the Hon'ble High Court of Kerala in WP(C) 11071/2018 dated 27/06/2024 filed by Sri.V.Chandran - Complied - Orders issued.

FOREST & WILDLIFE (B) DEPARTMENT

G.O.(Rt)No.151/2025/F&WLD Dated,Thiruvananthapuram, 15-04-2025

Read 1 Judgment of the Hon'ble High Court of Kerala dated 04/04/2016 in WP(C) 25408/2005 filed by Sri.V.Chandran.

2 GO(Rt) No.84/2018/F&WLD dated 16/2/2018.

3 Judgment of the Hon'ble High Court of Kerala dated 27/06/2024 in WP(C) 11071/2018 filed by Sri.V.Chandran.

4 Lr.No.TSP2-624/18 dated 02/08/2024 of the Divisional Forest Officer, Timber Sales Division, Palakkad.

ORDER

Sri.V.Chandran, the petitioner of the WP(C) mentioned above had participated in the auction of timber conducted by the Forest Department on 28/12/2001. He became the successful bidder and had deposited 1/5th of the sale as EMD. Due to various reasons, the entire timber could not be removed within the time granted for removal. The Divisional Forest Officer issued a notice demanding the loss sustained to the Government due to the re-auction conducted in respect of the timber remaining for removal by the petitioner. Subsequently, the petitioner approached the Hon'ble High Court by filing WP(C) No.28405/2005 and the Hon'ble HC as per judgment read as 1st above directed 1st respondent /State to consider the appeals and pass final orders, after affording an opportunity of hearing to the petitioner, which shall be done at the earliest, at any within three months from the date of receipt of a copy of the judgment. The Hon'ble Court further ordered that the interim stay granted will continue till such time and the fate of the amount remitted

by the petitioner will depend upon the outcome of the order to be passed.

2) Based on that, the petitioner was heard and Government Order read as 2nd above issued complying the direction of Hon'ble High Court and directing the petitioner to pay a sum of Rs.16,07,586/- as risk and loss quantified by the forest authorities.

3) Aggrieved by that decision, the petitioner, Sri.V. Chandran filed the WP(C) 11071/2018 before the Hon'ble High Court with following prayers:

i. To issue a Writ of certiorari or any other appropriate Writ or order or direction calling for the records leading to Ext.P10 (The revenue recovery notice issued by the 5th respondent dated 23.7.2005 to the petitioner), P11 (The revenue recovery notice issued by the 5th respondent dated 23.7.2005 to the petitioner) and P15 (GO(Rt) No.84/2018/F&WLD dated 16/2/2018) and quash the same;

ii. To grant such other relief as this The Hon'ble Court deem fit to grant in the interest of justice.

4) The Hon'ble Court disposed the same as per judgment 27/6/2024 with following directions:

1. The Ext.P15 (GO(Rt) No.84/2018/F&WLD dated 16/2/2018) is set aside.

2. The 1st respondent is directed to reconsider the matter in the light of the directions in Ext.P13 (The judgment dated 04.01.2016 in WP(C) No. 25408/2005) judgment and also adverting the contentions raised by the petitioner in Ext.P14 (The Argument note with letter of the counsel was submitted by the counsel for the petitioner), as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this judgment.

5) Based on the judgment, the petitioner was heard on 12/8/2024. The Divisional Forest Officer, Timber Sales Division, Palakkad and counsel for the petitioner attended the hearing. The Counsel for the petitioner submitted argument notes on behalf of the petitioner. The main contentions in the argument notes are:

i) The petitioner was not heard before passing the order quantifying the loss.

- ii) The low value bid in the re-auction could have been rejected by the officers and hence the loss is created by them.
- iii) One of the parties in the contract cannot be a judge of its own cause, particularly in deciding unliquidated damages.

6) The first contention of the petitioner and one of the main observation of the Hon'ble Court as per the paper 3rd above, which culminated in the judgement and is that *"The main grievance of the petitioner is that there is no quantification of loss, after giving an opportunity of hearing to the petitioner. I think there is some force in the above argument. Without expressing any opinion on merit, I am of the considered opinion that Ext.P15 can be set aside and there can be a direction to reconsider the matter in the light of the direction in Ext.P13 judgment"*. In compliance, the petitioner was heard on 12/8/2024 in the presence of the Divisional Forest Officer, Timber Sales Division, Palakkad and counsel for the petitioner attended the same. As per the paper 4th above, the Divisional Forest Officer, Timber Sales Division, Palakkad submitted that the four timber auctions in which the petitioner was a successful bidder, were conducted as per conditions notified by the Chief Conservator of Forests and published in the Kerala Gazette. The petitioner signed the undertaking before participating in all the four auctions. As per the notified conditions, the bidder has to remove the materials bid by him with 60 days from the date of confirmation. The petitioner has availed all the extensions on condition of payment of interest and surcharge, ground rent and other taxes applicable. The timber auction is guided only by the notified conditions, which were agreed to be abided by all the bidders including the petitioner before participating in auction. The forfeiture of already paid amount was done as per condition 4(e), the procedures of issuing notice, re-auction of unmoved timber and assessment of loss to Government were done as per condition 6(a) and revenue recovery was initiated as per condition 7(a) of notified conditions of auction, which were agreed to be abided by all the bidders including the petitioner. During the hearing, the Divisional Forest Officer also informed that the steps taken by the department to recover the loss from the petitioner, including revenue recovery is legally sustainable in the backdrop of Section 79 of the Kerala Forest Act, 1961. Based on that the petitioner have to pay a sum of Rs.16,07,586/- with 12 % interest as risk and loss quantified by the forest authorities. Thus the petitioner was heard before quantifying the loss.

7) The second contention of the petitioner is that the low value bid in the

re-auction could have been rejected by the officers and hence the loss is created by them. The timber auction is guided by the notified conditions, which were agreed to be abided by all the bidders including the petitioner before participating in auction. Low value bids are rejected in the auction. All the procedures adopted by the Divisional Forest officer including the conduct of auction, payment of values, extension of time for removal of timber, forfeiture of the amounts, the re-auction of the un-removed materials, calculation of the government loss and the revenue recovery procedures were done only as per notified condition of auction. The forfeiture of already paid amount was done as per condition 4 (e), the procedures of issuing notice, re-auction of un-removed timber and assessment of loss to government were done as per condition 6 (a) and revenue recovery was initiated as per condition 7 (a) of notified conditions of auction, which were agreed to be abided by all the bidders including the petitioner.

8) The third contention of the petitioner is that one of the parties in the contract cannot be a judge of its own cause, particularly in deciding unliquidated damages. This is complicated by the fact that there was no formal contract between the parties. Instead, the petitioner signed an undertaking to comply with the auction conditions. What has been signed is an undertaking ensuring compliance of the conditions for partaking in the auction and is not a contract. 1st respondent is not a party to the undertaking. 1st respondent has to hear and decide. Hence the question of bias does not arise. Moreover there is direction from the Hon'ble High Court to hear and decide, that too on the application of the petitioner.

9) Government have examined the matter in detail. After the detailed examination it has been noticed that the four timber auctions in which the petitioner was a successful bidder, were conducted as per conditions notified by the Chief Conservator of Forests and published in the Kerala Gazette. The petitioner signed the undertaking before participating in all the four auctions. As per the notified conditions, the bidder has to remove the materials bid by him with 60 days from the date of confirmation. The petitioner has availed all the extensions on condition of payment of interest and surcharge, ground rent and other taxes applicable. The timber auction is guided only by the notified conditions, which were agreed to be abided by all the bidders including the petitioner before participating in auction. The forfeiture of already paid amount was done as per condition 4(e), the procedures of

issuing notice, re-auction of unmoved timber and assessment of loss to Government were done as per condition 6(a) and revenue recovery was initiated as per condition 7(a) of notified conditions of auction, which were agreed to be abided by all the bidders including the petitioner. In addition to that the steps taken by the department to recover the loss from the petitioner, including revenue recovery is legally sustainable in the backdrop of Section 79 of the Kerala Forest Act, 1961.

10) As contemplated in the judgment, the hearing authority (1st respondent) is not a party to the undertaking. The contentions of the petitioner, that "one of the parties in the contract cannot be a judge of its own cause, particularly in deciding unliquidated damages" are also invalid as the document in question is not a contract but an undertaking ensuring compliance of the conditions for partaking in the auction. Quantification of loss is made on the basis of the conditions stipulated as per the undertaking.

11) In the above circumstances, the contentions of the petitioner in Exhibit P 14 are not legally sustainable and hence are rejected. The petitioner is liable to pay a sum of Rs. 16,07,586/- and other dues, if any, to be quantified by the forest authorities.

12) The Judgment of the Hon'ble High Court of Kerala dated 27/06/2024 in WP(C) 11071/2018 filed by Sri.V.Chandran is thus complied with.

(By order of the Governor)
K R JYOTHILAL
ADDITIONAL CHIEF SECRETARY

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

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Signed by

Ramjan P A

Section Officer

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