

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8167 of 2014

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1. M/S CHAMPARAN TIMBER and ALLIED PRODUCT, Hari Pakari Road, Majhaulia, District - West Champaran represented through its Partner Shri Ranjeet Kumar S/o Shri Ratnesh Prasad resident of Mohalla - Hari Vatika Chowk, P.O. + P.S. Bettiah, District - West Champaran

2. Ranjeet Kumar S/o Shri Ratnesh Prasad resident of Mohalla - Hari Vatika Chowk, P.O. + P.S. Bettiah, District - West Champaran Petitioner/s

Versus

1. The State of Bihar

2. The Principal Chief Conservator of Forest, Bihar, Patna

3. The District Magistrate, West Champaran, Bettiah

4. The Licensing Authority - cum - Divisional Forest Officer - Cum - Dy. Director, Balmiki Tiger Project, Division - 1, West Champaran, Bettiah

5. The Designated Officer- cum-Chief Conservator cum Regional Director, Balmiki Tiger Project, Division - 1, West Champaran, Bettiah

6. The Divisional Commissioner, Tirhut Range, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Adv.
Mr. Amit Bhushan, Adv.
Ms. Anu Priyadrashi, Adv.

For the Respondent/s : Mr. Rajiv Kumar Singh, G.P.2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-01-2015

Heard Mr. Shri Prakash Srivastava, learned counsel for the petitioners and Mr. Rajeev Kumar Singh, G.P.2 for the State.

The petitioners by way of this writ petition have prayed for quashing of the order bearing memo No. 624 dated 15.2.2014 passed by the respondent No.4, the Licensing Authority-cum-Divisional Forest Officer-cum-Deputy Director, Balmiki Tiger Project Division-I, West Champaran, Bettiah as contained in Annexure-5 and the order of the appellate authority bearing memo No. 220 dated 6.3.2014 as contained in Annexure-6, whereby the licence of the petitioners granted under the provisions of the Bihar Saw Mill (Regulation) Act,

1990 (hereinafter referred to as 'the Act') and the Rules framed thereunder, has been cancelled and which order of cancellation has been affirmed by the appellate authority, the respondent No.5.

Facts of the case briefly stated is that a Saw Mills licence was granted in favour of M/s Champaran Timber and Allied Products under the provisions of the Bihar Saw Mills (Regulation) Act, 1990 and the rules framed thereunder. The licence was issued in the name of Dinesh Kumar Gajjar bearing Licence No. 18 of 1997. According to the petitioners a partnership was formed amongst four persons namely Dinesh Kumar Gajjar, Mukesh Kumar Gajjar, Raj Kumar Somany and Ranjeet Kumar on 24.12.1998 for running the Saw Mill and which was submitted before the Licensing Authority for appropriate action and necessary orders. The partnership deed was followed by a deed of retirement dated 31.3.1999 executed by Dinesh Kumar Gajjar which was submitted in 2004 by one of the partners namely Raj Kumar Somany at the time of renewal of the licence. In between, the saw mill licence was renewed but the number changed to Licence No. 33 of 1999 when renewed for the period 1999 and again to Licence No. 22 of 2000 when renewed for the year 2000. This licence bearing No. 22 of 2000 has thereafter been continuously renewed under the signature of the partners Raj Kumar Somany and Ranjeet Kumar since the year 2000. On 7.6.2012 a show cause notice was issued by the Divisional Forest Officer- cum- Deputy Director to



two of the partners namely Ranjeet Kumar and Raj Kumar Somany asking them to show cause against the proposed cancellation of the licence inter alia on grounds that the ownership of the saw mill stood changed. A copy of the show cause notice is placed at Annexure-3. Vide order bearing Memo No. 1606 dated 4.7.2012 (Annexure-2/A), the licensing Authority-cum- Divisional Forest Officer-cum-Deputy Director suspended the licence of the petitioner inter alia on grounds of violation of Section 7(5)(a) and (b) of the Act read Rule 3(4)(ii) of the Bihar Saw Mill (Regulation) Rules, 1993 (hereinafter referred to as 'the Rules').

Being aggrieved the petitioners filed a statutory appeal before the Designated Authority-cum-Chief Conservator of Forest-cum-Regional Director, Balmiki Tiger Project giving rise to Misc. Appeal No. 2 of 2012 and the appellate authority taking note of the entire circumstances vide order bearing memo No. 1049 dated 23.11.2012(Annexure-4), has set aside the order of suspension as contained in Annexure 2/A and restored the licence of the petitioner. The designated authority has taken note of the entire circumstances governing the issue and it is after taking note of the developments that had taken place over the period that the appellate authority dropped the proceedings. The matter having been brought to rest, the licence of the petitioner of the saw mill was renewed continuously thereafter



for a decade until the petitioners were served with another show cause notice on self same grounds: The petitioners responded to the show cause. Not being satisfied that the impugned order bearing No. 624 dated 15.2.2014 has been passed by the Licensing Authority-cum-Divisional Forest Officer-cum-Deputy Director as contained in Annexure-5 whereby the licence of the petitioner saw mill has been cancelled on grounds of change of ownership in violation of Section 7(5)(a) of the Act and the Rules framed thereunder. The petitioner saw mill being aggrieved preferred appeal bearing No. 1 of 2014 which was dismissed vide order dated 06.03.2014 as contained in Annexure-6 by the appellate authority i.e. the Designated Officer-cum-Chief Conservator-cum-Regional Director. The petitioner being aggrieved is before this Court.

Mr. Shri Prakash Srivastava learned counsel for the petitioners has submitted that the entire materials which are the foundation for the order of cancellation impugned at Annexure-5 and 6 to the writ petition, had already been considered in the earlier round of proceedings which led to the suspension of the licence of the petitioner vide order as contained in Annexure-2/A and the appellate Authority upon consideration of the matter was pleased to set aside the order of suspension. He submits that on the selfsame set of facts and in the same circumstances, a different decision has now been



taken by the statutory authorities and which amounts to review of the decision on the same set of facts and which is impermissible in law. He submits that an admitted position is that the licence was initially issued in the name of the proprietor and in December, 1998, the licence holder sought to include 3 more persons as partners in the firm and a partnership deed in this regard was executed and submitted before the statutory authorities for their decision. It is submitted that no objections were raised by them to such inclusion. He submits that subsequently a deed of retirement was also submitted by the original licence holder namely Dinesh Kumar Gajjar and at this stage also no objection was raised by the statutory authorities rather the position was accepted and the licence of the Saw Mill continued to be renewed. He submits that in view of such circumstances coupled with the decision in the earlier round of proceedings where the same issue has been deliberated upon and the proposed action was dropped, the impugned action is clearly unsustainable.

The argument of Mr. Srivastava has been contested by Mr. Singh learned counsel appearing for the State. It is contended that since the change in the ownership of the Saw Mill is apparent and not in dispute hence the contravention of the statutory provisions underlying Section 7(5) of the Act and the Rules framed thereunder stands confirmed and in which event the orders impugned are in tune

with the statutory provisions. It is contended that the orders impugned merely restore the correct position, remove the infirmity that had been permitted to continue and bring to end the illegality perpetuated.

I have heard learned counsel for the parties and I have perused the materials on record.

The facts are not in dispute. The licence admittedly is in the name of M/S Champaran Timber and Allied Product, Hari Pakari Road, Majhauria, District West Champaran. The original licence holder is Dinesh Kumar Gajjar and the licence is in respect of M/s Champaran Timber and Allied Products bearing Licence No. 18 of 1997. The Licensee Dinesh Kumar Gajjar along with his brother Mukesh Kumar Gajjar and 2 others i.e. the petitioners herein formed a partnership on 24.12.1998 for smooth running of the Saw Mill business and a copy thereof along with application was filed by Dinesh Kumar Gajjar on 20.5.1999 seeking to include three more persons as partners for running of the saw mill and which application was not rejected. It is also an admitted position that subsequently a deed of retirement was also executed by the licensee Dinesh Kumar Gajjar and his brother which was submitted by one of the partners Raj Kumar Somany at the time of renewal of the licence in the year 2004 and which again was not rejected.

These facts confirm that the Licensing Authority had approved



the inclusion of the partners in the firm without raising any objection and the reason is apparent i.e. that the original licensee was also one of the partners in the business. In my opinion the Saw Mill having operated under the partnership since after 24.12.1998 without any complaints the matter should have been put to rest but it was not to be for a show cause notice was issued to the petitioners after 14 years on 7.6.2012 as contained in Annexure-3, charging them of running the saw mill in violation of Section 7(5)(a) of the Act read with Rule 3(4)(ii) of the Rules and asking them to respond to the proposed cancellation of licence. Not being satisfied with the reply, the licence of the petitioner was suspended for the said violation on 4.7.2012 vide order as contained in Annexure-2/A by the Licensing Authority. The petitioner preferred Appeal No. 2 of 2012 and the suspension order was stayed on 18.8.2012 as contained in Annexure-2. The final order was passed on 23.11.2012 as contained in Annexure-4 and the proceedings was dropped. The orders impugned are the 4th round faced by the petitioner on self same grounds and this time not only the licensing authority but even the appellate authority has confirmed the violations and thus cancelled the licence of the petitioner by the orders impugned.

The statutory provisions of Section 7(5)(a) of the Act vests absolute power in the licensing authority to revoke the licence where



it is of opinion that the licence holder has parted with the control over the saw mill. If at all any such occasion had arisen, it did arise in the year 1998 when the partnership deed formed and was placed before the respondent authorities on 20.5.1999 praying for inclusion of 3 partners for running of the saw mill and which was not objected to. The second stage came when the original proprietor sought retirement from the partnership and which was presented in the year 2004 and again the request was not rejected. In fact, thereafter the licence has continued to be issued in favour of the partners who are the petitioners before this Court. The matter for the third time was again tested when in the earlier round of proceedings in the year 2012 though the Licensing Authority suspended the licence for alleged violation of Section 7(5)(a) of the Act and the rules framed thereunder but the appellate authority found no violation as regarding any change of ownership and the proceedings were dropped. The impugned orders are a result of forth round proceedings.

From the facts apparent on the record it is manifest that the orders impugned are a mere second opinion on the self same set of facts.

A change in ownership is a fact situation and if the statutory authorities right since 1998, 1999 and 2012 have consistently accepted that there was no change in ownership or relinquishment of

control of the Saw Mill when the partnership was formed and took no decision to reject the partnership or the retirement, which were admittedly submitted before them on 20.5.1999 and in 2004 respectively then the rest are mere consequences and the matter having been deliberated upon by the statutory authorities and dropped by a reasoned order passed on 23.11.2012 vide Annexure-4, there is no change in circumstance warranting another round of proceedings under Section 7(5)(a) of the act read with rules 3(4)(ii) of the rules.

For the reasons aforementioned, the orders impugned cannot be upheld and are accordingly set aside. The writ petition is allowed.

(Jyoti Saran, J)

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