

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1754 of 2015

In
Civil Writ Jurisdiction Case No. 17802 of 2014

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Binod Sah, son of Shree Rajeshwar Prasad, resident of Village- Dardha
Mohammadpur, Police Station- Sakara, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Mr. Vivek Kumar, Commissioner -cum- Secretary, Department of Forest and Environment, Government of Bihar, Patna.
2. Mr. B.A. Khan, Principal Chief Conservator of Forest, Govt. of Bihar, Patna.
3. Mr. D.K. Shukla, Chief Conservator of Forest, Govt. of Bihar, Patna.
4. Mr. Prabhat Kumar, Divisional Forest Officer -cum- Licensing Officer, Tirhut Prasaran Van Pramandal, Muzaffarpur.
5. Mr. Manoj Kumar Singh, Appellate Authority -cum- Forest Conservator, Muzaffarpur Circle, Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mani Bhushan Kumar

For the Opp. Party/s : Mr. Siddharth Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 04-11-2015 Heard Mr. Mani Bhushan Kumar, learned counsel

appearing on behalf of the petitioner and Mr. Siddharth Prasad,

learned Assisting Counsel to Additional Advocate General No.4

for the State.

This contempt application was filed complaining of
non-compliance of the order passed in the writ petition bearing
CWJC No.17802 of 2014 by the Appellate Authority –cum-
Conservator of Forest, Muzaffarpur Circle, Muzaffarpur. It is the
complaint of the petitioner that having filed the statutory appeal
the same has remained pending even when this Court had

directed the Appellate Authority to dispose of the same within three months of the filing of the appeal which is stated to have been filed on 12.2.2015.

This matter was taken up on 7.10.2015 when Mr. Prasad, learned counsel appearing for the State while filing show cause has informed that the appeal has been dismissed on 28.9.2015 and that there was no representation on behalf of the petitioner.

Mr. Mani Bhushan Kumar, learned counsel appearing for the petitioner contesting the statement of Mr. Prasad submitted that although the date of hearing in the appeal was fixed on 26.9.2015 but there was none to conduct the proceedings and thus the petitioner though registered his appearance but in absence of any hearing he returned back. He submits that thereafter no intimation was received by the petitioner and behind his back the appeal has been dismissed on 28.9.2015.

It is in consideration of the contesting submission that this Court directed for production of the record in the appeal proceeding and which has since been produced by Mr. Prasad. The order-sheet in the appeal case reflects that the appellate authority vide order passed on 1.9.2015 records that the writ petitioner has appeared through counsel however, time was



granted to the respondent-opposite parties to file their reply. The matter was adjourned to 26.9.2015. Thereafter the order-sheet is silent. Although the original order-sheet is recorded on a white paper but thereafter the colour of the paper has changed and on a green sheet the next order is recorded on 28.9.2015 which while recording the absence of the petitioner also records the filing of the show cause by the respondents. The Appellate Authority thereafter without affording any opportunity to the petitioner to respond to the show cause has proceeded to pass the final order on the same date i.e. 28.9.2015.

Although this action of the Appellate Authority was sought to be defended by Mr. Prasad to submit that although the date of hearing was fixed on 26.9.2015 but three days earlier i.e. on 23.9.2015 a letter was addressed to the petitioner regarding postponement of the date of hearing on 28.9.2015 and which letter was dispatched on 24.9.2015. It is rather surprising that the Appellate Authority without bothering to satisfy himself whether or not the letter adjourning the date to 28.9.2015 has reached the petitioner, has proceeded to pass the order ex-parte. It is also difficult to appreciate that when originally the date was fixed on 26.9.2015 then why the proceedings were not held on the said date even for purpose of adjournment to 28.9.2015.

Mr. Mani Bhushan Kumar informs the Court that the

petitioner was present for hearing on 26.9.2015 but no information was given by the office regarding the postponement of the date nor there is any document on record which does confirm that the petitioner or his counsel was duly intimated.

The arbitrariness is writ large. However, since this Court while disposing of the writ petition had required the Appellate Authority to consider and dispose of the appeal which has since been disposed of on 28.9.2015 hence even while being dissatisfied with the manner of disposal and the mechanical compliance of the order by the Appellate Authority, this Court while preserving liberty for the petitioner to question the order so passed by the appellate authority in an appropriate proceeding before the appropriate forum and while preserving its opinion as to the legality and validity thereof would not find any reason to continue with the contempt proceedings and which is disposed of accordingly.

The record so produced by Mr. Prasad has been returned.

(Jyoti Saran, J)

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