

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.441 of 2014

In

C. REV. 419 of 2013

- =====
1. The State of Bihar through The Chief Secretary, Government of Bihar, Old Secretariat, Patna
 2. The Principal Secretary, Environment and Forest Department, New Secretariat, Patna
 3. The Principal Chief Conservator of Forests, Environment and Forest Department, New Secretariat, Patna
 4. The Divisional Forest Officer, Mithila Forest Division, Darbhanga, Environment and Forest Department, New Secretariat, Patna

.... Appellants

Versus

1. Laltun Thakur, Son of Late Bulla Thakur Resident of Village and Post Office- Sonaki, District- Darbhanga
2. The Conservator of Forest Cum Appellate Authority, Muzaffarpur Circle, Muzaffarpur, Environment and Forest Department, New Secretariat, Patna

.... Respondents

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with

Letters Patent Appeal No.442 of 2014

IN

Civil Writ Jurisdiction Case No. 20782 of 2012

- =====
1. The State of Bihar Through The Secretary Environment and Forest, Patna
 2. The Principal Chief Conservator of Forest, Patna, Bihar
 3. The Conservator of Forest, Muzaffarpur, Bihar
 4. The Divisional Forest Officer Cum Licensing Authority, Darbhanga

.... Appellants

Versus

Laltun Thakur, Son of Late Bulla Thakur Resident of Village and Post Office- Sonaki, District- Darbhanga

.... Respondent

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with

Civil Writ Jurisdiction Case No.21305 of 2013

- =====
1. The State Of Bihar through The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
 2. The Principal Secretary, Environment and Forest Department, New Secretariat, Patna.
 3. The Principal Chief Conservator of Forest, Environment and Forest Department, New Secretariat, Patna.
 4. The Divisional Forest Officer, Mithila Forest Division, Darbhanga,



Environment and Forest Department, New Secretariat, Patna.

.... Petitioners

Versus

1. Laltun Thakur, S/O Late Bulla Thakur Resident of Village and Post Office- Sonaki, District- Darbhanga.
2. The Conservator of Forest Cum Appellate Authority, Muzaffarpur Circle, Muzaffarpur, Environment And Forest Department, New Secretariat, Patna.

.... Respondents

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Appearance :

(In LPA No.441 of 2014)

For the Appellants : Mr Ranjeet Kumar, AC to PAAG 1
For the Respondents : Mr. Baidyanath Thakur, Advocate &
Mr. Shankar Kumar Thakur, Advocate.

(In LPA No.442 of 2014)

For the Appellants : Mr. Ranjeet Kumar, AC to PAAG 1
For the Respondent : Mr. Baidyanath Thakur, Advocate &
Mr. Shankar Kumar Thakur, Advocate.

(In CWJC No.21305 of 2013)

For the Petitioners : Mr. Ranjeet Kumar, AC to PAAG 1
For the Respondents : Mr. Baidyanath Thakur, Advocate &
Mr. Shankar Kumar Thakur, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and**

**HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

12 22-11-2016

These batch of cases disclose very interesting features. There was a Saw Mill in Darbhanga, which was duly registered under the scheme of Small Scale Industry with the government of Bihar. It was operating prior to 1990. In 1990, for the first time, the Saw Mills were brought under the licensing regulation by the State by enactment of Bihar Saw Mill (Regulation Act) 1990, which was published in the extra ordinary gazette on 07.12.1990, but was made effective from 1st May, 1990.



Section 5 thereof reads as follows:

5. Application for licence.- On and from the appointed day:-

(a) no person shall establish a saw mill or saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act;

(b) no person shall operate a saw mill or a saw pit in existence on the said date, unless he is granted a licence in that behalf under this Act on an application made by such person within a period of thirty days from such date;

Provided that for the period of thirty days and thereafter the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence under this Act and he was operating the saw mill or saw pit accordingly.

2. From a plain reading of Section 5, it appears that all existing Saw Mills, who was unlicensed, had to make an application for grant of license within 30 days of the appointed date, that is to say, when the Act deemed to have come in force. The reference to the proviso of Section 5(b) of the Act would show that if such an application was made then, unless it was rejected, it would be deemed to be granted. There is a controversy that though gazette notification notifying the Act was issued on 07.12.1990, would it be made operative w.e.f. 1st May, 1990.

3. Be that as it may, it is not relevant that whether the appointed date is 1st May, 1990 or 07th December, 1990, the Saw



Mill owner did not apply for a license within thirty days. The S.S.I. unit was then purchased after about one year of enactment of the Act by the Laltun Thakur. Having purchased it, he made an application for grant of license on 18.01.1994. It was not rejected nor was it granted. He continued to apply for renewal till ultimately the District Forest Officer took note of it and holding that he had not applied within the stipulated time, as prescribed in Section 5(b) of the Act, he had not even deposited the security along with the application and, therefore, rejected the application. It may be noted that the security was deposited sometime in the year 1996 i.e., two years after the application.

4. Laltun Thakur then preferred an appeal before the Conservator of Forest, Muzaffarpur Division, who was the appellate authority. The Conservator of Forest noticed that he had applied and had also deposited money for security. As renewal applications were filed, the licensing authority must reconsider the matter and grant license. This order having been passed in favour of Laltun Thakur, when it was not being obeyed by the District Forest Officer, he filed the writ petition, being C.W.J.C. No. 20782 of 2012, for implementation of the order of the appellate authority by the subordinate licensing authority, which writ application was allowed by the judgment and order dated



07.11.2012 by the learned single Judge. We may add that it was rightly so allowed. In the case of **Bhopal Sugar Industries Ltd. vs. The Income Tax Officer, Bhopal** since reported in **AIR 1961 SC 182** direction was issued by the Apex Court to the Income Tax Authority to act in accordance with the order of the appellate authority. In the present case State then filed review application for review of the aforesaid writ order, being Civil Review No. 419 of 2013, which was rejected by the order dated 05.03.2014. Thus, there were two orders, one in the writ proceeding and another in the review application. The State accordingly filed these two letters patent appeals, being L.P.A. No. 441 of 2014 and 442 of 2014, being aggrieved by the order passed in the writ petition and the review application. In these letters patent appeals, they have challenged the correctness of the order passed by the appellate authority inviting the High Court to decide its correctness.

5. Before proceeding further, we may note that in view of the judgment of the Apex Court, as referred to above, **Bhopal Sugar Industries Ltd. (supra)** wherein under the similar circumstances, when a writ application was filed for implementation of the orders of the Tribunal by the Income Tax officer, the High Court went into the correctness of the order of the Tribunal and held that the order of the Tribunal is erroneous



and as such mandamus could not be issued. The matter having been taken to the Apex Court, the Apex Court held that when an application was filed for implementation of the order passed by the Tribunal by the Income Tax Officer, it was not open to the High Court to go into the correctness or otherwise of the order of the Tribunal. The State had not filed any appeal before the High Court. Thus, the order of the High Court refusing to interfere in the matter was set aside by the Supreme Court and it issued mandamus to the Income Tax Officer to implement the order of the Tribunal.

6. Here the L.P.As. are filed challenging correctness of the order of the Appellate Authority. The writ petition was for implementation of the order of the Appellate Authority by the District Forest Officer. The facts are virtually similar. Thus, in a proceeding filed by Laltun Thakur before this Court for issuance of mandamus to implement the order of the Appellate Authority, the State could not be heard challenging the correctness of the order of the Appellate Authority. If that be so, then the appeals preferred by the State have to be held not maintainable. Both the Letters Patent Appeals of the State are, thus, liable to be dismissed and dismissed as such.

7. But, then there is yet another proceeding rightly,



as advised, the State has filed independent writ petition also being C.W.J.C. No. 21305 of 2013, challenging the order of the Appellate Authority. We would first note that we are surprised as to how the State was challenging this order because the Appellate Authority is the Government itself. Normally, if an order is passed by the State functionary, the subordinate cannot be permitted to challenge the same that would lead to administrative anarchy.

8. But here when we examined the facts, the situation is different. The District Forest Officer, after having received the order of the Conservator of Forest and finding it contrary to law, wrote to the then Chief Conservator of Forest, who is one of the senior most officer of the State, pointing out the wrong order passed by the Appellate Authority. The Chief Conservator of Forest has considered the matter and then directed that a writ petition has to be filed by the State challenging the order passed by the Appellate Authority, which, in our view, was the right course for, the State is permitted under law to challenge orders of subordinates provided the writ petition is at the instance of an authority above the authority whose order is challenged.

9. As we have noted the facts above, the private respondent had made an application for grant of license only in the 1994, though based upon the Small Scale Industry Registration



Certificate, which was granted in the year 1990. The Saw Mill was established prior to 1990. In view of the provision of Section 5 and its proviso, the application could not be entertained at that point of time as the fact was that the Saw Mill was operational from before 1990.

10. Learned counsel for the Saw Mill submits that even in the seniority list prepared from time to time, the petitioner's Saw Mill is shown as functional. That may be so; the question of law and the legal position is the same as contained in Section 5 of the said Act. The orders of the Licensing Authority and the Appellate Authority have to be tested on the basis of the aforesaid provisions. Hence, the order of the Appellate Authority cannot be sustained. Therefore, the writ petition has to be allowed and the order of the Appellate Authority dated 21.08.2010 has to be set aside.

11. In the result the two Letters Patent Appeals by the State have to be dismissed but the writ petition of the State has to be allowed. Order accordingly.

(Navaniti Prasad Singh, J)

Rajiv/abhay
AFR

(Jitendra Mohan Sharma, J)

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