

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.401 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 11177 of 2009
Along with
Interlocutory Application No.6238 of 2016**

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Shyamal Kishore Singh, son of late Ravindra Narayan Singh, Proprietor M/S
Bajrang Saw Mill, Polytechnic Road, Ward No. 11, P.S. and Distt. – Saharsa.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Forest and Environment,
Department of Forest, New Secretariat, Patna.
2. The Conservator of Forest, Purnea Division, Purnea.
3. The Licensing Officer-cum-Divisional, Forest Officer, Saharsa.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kr. Singh, Advocate
Mr. Ranvijay Narain Singh, Advocate
Mr. Rana Pratap Singh, Advocate
Mr. Dharmendra Kr. Singh, Advocate

For the Respondent/s : Mr. M. N. H. Khan, S.C.-1
Mr. Md. Irshad, A.C. to S. C.-1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

Date: 19-08-2016

Re.: Interlocutory Application No.6238 of 2016

The sole appellant died on 30th of January, 2016 leaving behind Kumkum Devi, Pankaj Kumar and Rakesh Kumar as his legal heirs. The application is by Pankaj Kumar, son of the deceased, though the deceased has left behind his wife Kumkum Devi and Rakesh Kumar, the other son. Since the application is by one of his sons, he is ordered to

represent the estate of the deceased for the purpose of present Letters Patent Appeal. However, the other legal heirs Kumkum Devi and Rakesh Kumar are ordered to be impleaded as respondents.

2. Interlocutory Application stands disposed of accordingly.

Re.: Letters Patent Appeal No.401 of 2014

The order dated 30th of October, 2013 passed by the learned Single Bench is subject matter of challenge in the present Letters Patent Appeal. The challenge is to non-renewal of licence earlier granted to the appellant under Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as 'the Act') remained unsuccessful.

2. The appellant obtained a licence to run Saw Mill, but the same was not renewed as required in terms of the Bihar Saw Mills (Regulation) Rules, 1993 (hereinafter referred to as 'the Rules'). The Divisional Forest Officer annulled the licence as the appellant failed to renew his licence in terms of Sections 7 and 9 of the Act and Rules 6 and 7 of the Rules on 25.11.2004. An appeal against the order was dismissed on 21st of January, 2006.

3. The learned Appellate Authority dismissed the appeal on the ground that the appellant has failed to apply for renewal of licence within time year after year. The last date for submitting the application for renewal of licence every year is 30th of November, but the appellant has not furnished the application for renewal within the time fixed and

that the appellant has failed to prove that he submitted an application for renewal of licence in terms of the Statute.

4. Though in the writ application before the learned Single Bench, the stand of the appellant was that he submitted application year after year along with the requisite fee, but the learned Single Bench has found from the affidavit filed on behalf of the respondents that there was omission on the part of the appellant to adhere the statutory time frame and that the applications along with fee were not submitted. In respect of an argument that no opportunity was granted before annulling the licence, the Court found that the appellant had statutory obligations to apply for renewal of the licence; therefore, no leverage can be given to the appellant on that score for failure to perform function as per the Statute. Consequently, the writ petition was dismissed.

5. Before this Court, learned counsel for the appellant contends that non-renewal of a licence leads to one or more penalties as provided in Section 14 of the Act which *inter-alia* contemplates that if any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or rules made thereunder, such contravention is punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees. It is contended that the renewal of licence is a

condition of Section 7 of the Act. Therefore, for the violation of the provisions of the Act, the penalties imposable can be compounded in terms of Section 19 of the Act and that the appellant is willing and ready to seek compounding of the default in depositing the licence fee.

6. Some of the relevant provisions of the Act and the Rules read as under:-

7. Grant, renewal, revocation or suspension of licence.- (1) An application for licence under section 5 shall be in such form and shall be accompanied by such application fee and such security deposit for due observance of the conditions of the licence, as may be prescribed.

(2) On receipt of the application under sub-section (1), the licensing officer may after making such enquiry, as it may deem fit:-

(i) grant the licence; or

(ii) by order in writing for reason in brief to be stated therein, refuse to grant the licence:

Provided that no order refusing to grant the licence shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(3) A licence granted under sub-section (2) shall be subject to the provisions of this Act and to such conditions as may be prescribed.

(4) The provisions of this section shall apply to renewal of licence as they apply to grant of licence or refusal to grant a licence.

(5) If the licensing officer is satisfied, either on a reference made to it in this behalf or otherwise, that:-

(a) xx xx

(b) the licensee has without reasonable cause, failed to comply with any of the conditions of the licence or any direction lawfully given by the licensing officer or has contravened any of the provisions of this Act or the rules made thereunder; or

Xxx xxx xx xxxx”

14. Penalties.- (1) If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention:

Provided that for the second or subsequent offence the minimum imprisonment in either case shall be three months and minimum fine in either case shall be three thousand rupees where such contravention, attempt or abetment relates to section 5 or when unlawful wood involved in the contravention is more than 5 cubic metres in volume.

(2) xx xx xxx xx

19. Composition of offence.- (1) Forest Officer empowered by the State Government in this behalf may,-

(a) accept from any person whose licence is liable to be revoked or suspended under sub-section (5) of section 7 or who is reasonably suspected of having committed for the first time of an offence relating to non-submission of return under Section 9 or of non-maintenance of account of wood under Section 10 or sawing of wood unlawfully obtained which is of less than half of a cubic metre in volume, a sum not exceeding five thousand rupees in lieu of such revocation or suspension or by way of composition for such offence, as the case may be and may impose as a penalty a sum not exceeding five thousand rupees and shall order confiscation of unlawfully obtained wood which was seized;

Xx xx xxx xx”

Rule 6 of the Rules read as under:-

6. Renewal of the license.- (1) Every licensee shall apply to the licensing officer for renewal of the licence, at least one month before the expiry of the licence.

(2) The application fee for renewal of licence for saw mill shall be rupees one thousand and for saw pit shall be rupees fifty.

(3) The licensing officer after making such enquiry, as he may deem fit, may renew or may order in writing stating the reasons in brief, refuse to renew the licence:

Provided that no order of refusing to renew the licence shall be passed unless the applicant has been given reasonable opportunity of being heard.

(4) The licence shall be renewed for one calendar year only:

Provided that for the period during which application for renewal of licence is pending for consideration, it shall be deemed as if such licence was renewed under the Act and the licensee was operating the saw mill or saw pit accordingly.

(5) The licence shall be renewed on the same conditions on which it was granted:

Provided that unless there are reasons to the contrary, the licence shall ordinarily be renewed and within one month from the date of application the licensing authority must inform the licensee regarding renewal or refusal of the licence as the case may be.”

7. A perusal of the Act and Rules framed there under shows that the licensee is required to apply to the Licensing Authority for renewal of the licence at least one month before the expiry of the licence. Such application has to be accompanied with the renewal fee. Since as per the findings recorded, the appellant has not submitted any application for renewal within the time fixed, the appellant is in technical violation of the provisions of the Statute which attracts penalty in terms of the Section 14 of the Act. Such penalty which can be levied is compoundable in terms of Section 19 of the Act.

8. In view of the submission of the learned counsel for the appellant, in these circumstances, we dispose of the present Letters Patent Appeal with liberty to the appellant to apply for composition of the default in making application for renewal of the licence along with the renewal fee within one month from today. On a such application being made, if any, along with renewal fee, the competent authority shall examine as to whether such default is liable to be compounded in terms of Section 19 of the Act and, if yes, then the terms thereof. The competent authority shall pass an order within next six months.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
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