IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 22071 of 2013

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Laxmi Choudhary Son Of Late Baldeo Choudhary, Partner- Proprietor Of M/S Choudhary Wood Works, P.O. & P.S. Hayaghat, District - Darbhanga.

... ... Petitioner/s

Versus

1. The State Of Bihar, Through The Secretary, Environment & Forest Department, Government Of Bihar, Patna.
2. The Principal Chief Conservator Of Forest, Bihar Patna.
3. The Conservator Of Forest, Muzaffarpur Circle, Muzaffarpur
4. The Licensing Officer Cum Divisional Forest Officer, Mithila Forest Division, Darbhanga,
5. Mohan Kumar Choudhary Son Of Late Basudeo Choudary, Resdietn Of P.O & P.S- Hayaghat, District- Darbhanga.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 27-11-2018

Heard learned counsel for the petitioner; State and respondent no. 5.

2. The petitioner has moved the Court for the following reliefs:

> *"i) For issuance of a writ in the nature of certiorari for quashing the order dated 25.5.2012 as contained in memo no. 830 dated 28.05.2012 issued by the Licensing Officer-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga whereby the license of the petitioner's Saw Mill has been suspended in terms of Section 7(5) of the Bihar Saw Mills (Regulation) Act, 1990 as contained in Annexure-14 to the writ application.*

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ii) For issuance of a writ in the nature of certiorari for quashing the order dated 9.9.2013 as contained in memo no. 1763 dated 10.09.2013 issued by the Appellate Authority-cum-Conservator of Forest, Muzaffarpur Circle, Muzaffarpur in the appeal filed by the petitioner bearing Appeal No. 10/2012 against the order dated 25.05.2012 issued by the Licensing Officer-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga as contained in Annexure-16 to this writ application.

Iii) For issuance of writ in the nature of Mandamus directing the respondents to renew the license of the petitioner's Saw Mill and further be directed to permit the petitioner to operate and run his Saw Mill in accordance with law without any hindrances which was running in the name and style as M/s Choudhary Wood Works.

iv) To further issuance of writ in the nature of Mandamus to declare and hold that the petitioner's Saw Mill is a partnership firm which is under control of the petitioner by virtue of the sale deed dated 30.3.2011 and power of attorney dated 10.2.2001 executing by surrendering partner respondent no. 5.

v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

3. The petitioner claims to have applied along with respondent no. 5 for grant of license to run a Saw Mill in the year 1994. However, the license was granted only in the name of respondent no. 5 and later in the year 1995 it was also renewed only in the name of respondent no. 5. However, in 1996 the renewal was in the joint name of the petitioner and respondent no.

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5. The petitioner claims that the basis was the joint application by the parties initially in the year 1994 itself. Later in the year 2012, the respondent no. 5 filed an informatory petition before the Sub-Divisional Magistrate that he was forcibly made to sign on an affidavit dated 16.03.2012 that he was operating the saw mill jointly with the petitioner. He further filed an application before the respondent no. 4 seeking rectification of the license in his name only after excluding that of the petitioner. Initially, by order dated 25.05.2012, the respondent no. 4 suspended the license and in the appeal filed by the petitioner and respondent no. 5, the respondent no. 3 has set aside the order passed by the respondent no. 4 but has not passed any consequential order.

4. Learned counsel for the petitioner submitted that once the order passed suspending the license in the joint name of the petitioner and respondent no. 5 has been set aside, the license should be further renewed and granted to him. It was submitted that the stand of the respondent no. 5 is with ulterior motive as he had agreed to the grant of license in the joint name right from the year 1996 till 2012 and for the whole period he had never objected to the same. It was submitted that even the authorities had never objected to the same and, thus, the suspension of the license and non renewal of the same is without any basis. Learned counsel

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submitted that the respondent no. 5 has waived his right due to his conduct of remaining salient for the period the license was issued in the joint name of both the petitioner and respondent no. 5. Learned counsel referred to and relied upon a decision of a co-ordinate Bench of this Court in the case of **M/s Champaran Timber and Allied Product vs. State of Bihar** reported as **2015(2) PLJR 211**, where the Court had interfered with the order of cancellation of the license on the ground that there had been change in ownership. It was submitted that in the present case when the partnership was accepted by the authorities and order for its suspension on the ground that the same was not permissible is arbitrary.

5. Learned counsel for the State, relying upon the counter affidavit filed by him submitted that it is a case of pure and simple fraud. It was submitted that initially the application for grant of license was only by the respondent no. 5, which would be *prima facie* apparent from the application itself which shows that both in the name of the applicant, it was only respondent no. 5 with the name of his father and by a separate ink by interpolation the name of the petitioner has been added, which would be further apparent from the declaration given at the bottom of the said form where only the respondent no. 5 has signed where he was required

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to and the signature of the petitioner is below the endorsement of signature of the applicant. Learned counsel submitted that there was no formal application with regard to any error which required correction and though there was a partnership agreement but without any application to the authorities for making such change in the name of the partners. However, learned counsel for the State admitted that the authorities had granted the license in the joint name of the petitioner and the respondent no. 5 from the year 1996. Learned counsel submitted that the authorities upon verification have come to the conclusion that there is apparent and clear cut manipulation and interpolation in the original application document and, thus, the same amounts to fraud and as the law relating to fraud is well settled, the same should not be allowed to be perpetuated, the petitioner is not entitled to grant of license in his favour.

6. On a query of the Court as to what the stand was with regard to respondent no. 5, learned counsel for the State fairly submitted that though nothing has been stated in the counter affidavit, but from the facts which have been stated and which are before the Department, the fraud could not have been played without the participation of the respondent no. 5. On a further query of the Court he submitted that now the respondent no. 5 has

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been issued license only in his name which he is running, but it has been made subject to the result of the present writ application.

7. Learned counsel for respondent no. 5 submitted that the license is required to be issued only in his name as he was the sole applicant and whatever working arrangement he had with the petitioner was purely on a private basis without him having any official recognition or right or claim over the same.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The Court finds credence and substance in the stand taken by the State authorities that bare perusal of the application form dated 22.01.1994 indicates that the petitioner's name had been added later on, as neither his parentage has been given in the column no. 1 nor his signature is above where there is an endorsement that the signature of the applicant should be affixed and it is only the respondent no. 5 who had given details at column no. 1 and signed above the endorsement where the applicant is required to put his signature. Further, the license was again renewed for the year 1995 without the petitioner at any point of time objecting to the same. On a direct query of the Court as to where was the application before the authorities pointing out the error in the

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issuing of license only in the name of respondent no. 5 in the year 1994,which according to him has led to correction in the renewal by which the name of the petitioner has also been included in the year 1996, neither the same is on record nor learned counsel for the petitioner could show to the Court any such document. At this juncture, learned counsel for the State also clarified that there was no such application, which has been clearly stated at paragraph no. 19 of the counter affidavit.

9. Further, on facts, it is apparent that such issuance of license for the years 1996 to 2012 could not have been behind the back or the respondent no. 5 and he could not have been ignorant of such fact and him not objecting before the authorities at any point of time, makes him an equal partner in the fraud committed by the petitioner before the Department, including manipulation of records inasmuch as, his signature has been put on the initial application form much later.

10. In view thereof, without going into the finer details and technicalities of the law, as fraud stands established from the facts of the case, in the considered opinion of the Court, the petitioner is not entitled to any relief. Equally, as respondent no. 5 is also responsible for the fraud by way of interpolation/manipulation and not objecting to the same and

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remaining silent and even accepting the same from 1996 till 2012, makes him an equal partner to the fraud. Thus, even he does not deserve any indulgence of being issued a license.

11. Coming to the decision relied upon by learned counsel for the petitioner in the case of **M/s Champaran Timber and Allied Product** (supra), the same would not be of any help to the petitioner for the simple reason that the facts were entirely different in the said case. In the said case, there was a change in the partnership which was brought to the notice of the authorities and the authorities had accepted the same and had granted license in the joint name of all the partners and the final order had initially been passed by the authorities till the level of the appellate authority. Thereafter, the matter was again sought to be raised by the authorities and they had decided to cancel the license. The Court would note here that there was no case of any fraud or any dispute among the partners. In the present case, it was the respondent no. 5, who had objected to the license being issued in the joint name and the authorities have also come to a conclusive finding of fraud/manipulation/interpolation. Thus, the decision cannot help the petitioner in the facts and circumstances of the present case.

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12. For reasons aforesaid, the writ petition stands dismissed. Both the petitioner and respondent no. 5 are not only held ineligible for grant of license but also liable to be prosecuted.

13. Before parting, the Court feels it necessary to direct the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna to get a through enquiry conducted into the matter and fix responsibility, both on the officers and private persons responsible for such fraud and thereafter take corrective measures and action against the persons concerned.

(Ahsanuddin Amanullah, J)

P. Kumar

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