

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8437 of 2016

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Raj Kumar Mistry Son of late Basnat Mistry Resident of Dumari Chatti,
Fatehpur, Police Station Fatehpur, District Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary Environment and Forest Development, Govt. Of Bihar, Patna.
2. The Prescribed Authority Cum Conservator of Forest Gaya Division Gaya.
3. The Licensing Officer Cum Divisional forest Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar
For the Respondent/s : Mr. Harish Singh Goldie.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 22-04-2019

Heard the learned counsel for the petitioner and the State.

The instant writ petition has been filed for quashing the order dated 31.03.2016, as contained in Annexure-7, passed by the Prescribed Officer-cum-Conservator of Forest, Gaya Division, Gaya in Appeal No. 01 of 2015, whereby the conservator of Forest, Gaya (Respondent No. 2) has dismissed the appeal of the petitioner filed against the order dated 04.03.2015 passed by the Divisional Forest Officer, Gaya in Confiscation Case No. 36/2014, by which articles seized from the premises of petitioner has been directed to be confiscated and also for directing Respondent No. 3 to release the articles seized from the premises of petitioner.



Learned counsel for the petitioner has submitted that petitioner's father, namely, late Basant Mistry had filed application for running Saw Mill on 30.09.1996 along with Bank Draft No. 244415 of Rs. 1,000/- and also D.D. No. 244416 of Rs. 2,000/- but father of petitioner was not given license for running the Saw Mill despite his name was at serial no. 89 in the seniority list of the selected Saw Mills prepared on 30.08.2010.

Learned counsel for the petitioner has submitted that after death of father of petitioner, he sent letter dated 30.09.2010 to the Licensing Officer-cum-Divisional Forest Officer, Gaya for grant of license on the basis of seniority. The petitioner also stated in the aforesaid letter that after death of his father, he (petitioner) has submitted application along with Bank Draft of Rs. 1,000/- and 2,000/- before 29.10.2002.

Learned counsel for the petitioner has submitted that petitioner was not given license despite representation filed before the Licensing Officer-cum-Divisional Forest Officer, Gaya. The Saw Mill of the petitioner was closed. Thereafter for earning the livelihood petitioner opened 18" diameter Saw Mill for which no license is required as per government notification, 2012. The petitioner continued to earn his livelihood by running 18" diameter saw mill.



It has been submitted that the Range Officer, Gurpa along with other personnel of Forest Department conducted raid on 08.06.2014 in the premises of the saw mill of petitioner and found 18” diameter saw mill under running condition which was meant for manufacturing of furniture for which no license was required. The Range Officer, Gurpa seized a complete set band saw of 36” diameter from the Saw Mill of the petitioner, which was not in running condition along with other articles as well as timber of Shisham and Mahua. The Range Officer, Gurpa after making seizure list of articles and timbers seized from the premises of the petitioner initiated confiscation proceeding. Accordingly, Confiscation Case No. 36 of 2014 was registered and confiscation proceeding was started before the Licensing Officer-cum-Divisional Forest Officer, Gaya.

The petitioner appeared before the Divisional Forest Officer, Gaya and filed his show cause denying the allegation levelled by the Ranger Officer. The petitioner in the show cause accepted that his father had applied for license along with required fee for running 36” diameter saw mill but license was not issued. Hence 36” diameter Saw Mill was closed. It is stated in the show cause that name of saw mill of petitioner was in seniority list but license was never given to his father. It is further stated in the



show cause that timber of Shisham was kept by one Satyendra Yadav in the Saw Mill of petitioner. Satyendra Yadav had valid transport license of the aforesaid Shisham timber, which was produced by him before the Divisional Forest Officer, Gaya.

Satyendra Yadav also filed show cause along with affidavit claiming that the seized timber of Shisham from the petitioner's Saw Mill was owned by him (Satyendra Yadav). Satyendra Yadav has admitted in his show cause that he was not knowing that petitioner's Saw Mill for 36" diameter wood is closed and only work of furniture is going on in the saw mill. Satyendra Yadav had also produced the license of transportation of timber before the Divisional Forest Officer, Gaya. Copy of show cause filed by Satyendra Yadav along with permit for transportation is annexed as Annexure-5.

The Licensing Officer-cum-Divisional Forest Officer, Gaya without perusing the show cause of the petitioner and owner of timber, namely, Satyendra Yadav, rejected the show cause of the petitioner on 04.03.2015 observing that no valid document has been shown.

The petitioner preferred appeal before the Competent Authority-cum-Conservator of Forest, Gaya against the order of



Licensing Officer. The petitioner made prayer to release the seized articles by the Confiscating Officer. The appeal was dismissed.

Learned counsel for the State has filed Counter Affidavit stating therein that petitioner was found operating Saw Mill of 36" diameter. All the relevant materials of aforesaid Saw Mill was seized from the Saw Mill. It is further stated in the Counter Affidavit that Shisham and Mahua logs have also been recovered from the Saw Mill of petitioner.

Learned counsel for the petitioner has submitted that it is mentioned in the seizure-list that Band Saw (36") entire set (not in running condition) was seized. The copy of Seizure-list is annexed as Annexure-3.

This Court after looking into order dated 04.03.2015 passed by the Confiscating Officer finds that Satyendra Yadav had appeared before him and filed his show cause claiming the owner of the aforesaid log, which was seized from the Saw Mill of petitioner. Satyendra Yadav had also produced valid license of transportation of timber before the Divisional Forest Officer, Gaya. Satyendra Yadav had disclosed before the Confiscating Officer that he had purchased aforesaid Shisham log for the purpose of marriage of his sister and he had brought the logs in the year 2012 by the tractor of Vishambhar Yadav. The valid transport permit



filed by Satyendra Yadav before the Confiscating Officer along with show cause was never doubted by the Confiscating Officer. In the Counter Affidavit also there is no any submission by the State that the aforesaid transport license was not genuine. The seizure-list shows that the shape of 36” diameter wood was not in working condition at the time of seizure. The Band Saw (36”) entire set was not in running condition. The log woods, as mentioned in the Counter Affidavit, were found in the saw mill of petitioner, which created doubt to the raiding authority that he is running 36” diameter of Saw Mill. The petitioner has mentioned in the show cause that he was not running any saw mill of 36” diameter. Satyendra Yadav had clearly stated in his show cause that he had no knowledge that petitioner’s Saw Mill for 36” diameter wood was closed. He claimed himself the owner of the Shisham log. He has also produced the transport permit for the log.

From perusal of the order of Confiscating Officer, this Court finds that he has failed to take into consideration all these facts while passing the impugned order. The impugned order has been passed in mechanical manner without looking into relevant facts produced by the petitioner before the Confiscating Authority.

Therefore, the impugned order dated 14.03.2015, passed by Confiscating Officer as contained in Annexure-6 suffers from



illegality. The appellate authority in mechanical manner upheld the order of Confiscating Officer by order dated 31.03.2016 (Annexure-7) without considering the case of petitioner.

Therefore, the orders dated 4.03.2015 (Annexure-6) and 31.03.2016 (Annecure- 7) are hereby set aside.

Respondent no. 3 is directed to release the articles seized from Saw Mill of the petitioner within a period of fifteen days from the date of receipt/production of copy of this order after proper verification of all the relevant documents produced by the petitioner.

The petitioner will file affidavit before Respondent No. 3 at the time of receipt of seized articles that he shall not operate 36” diameter saw mill in his premises without obtaining license from competent authority. He will be liable for punishment in the event he is found operating 36” diameter Saw Mill.

This writ petition is accordingly allowed with directions made above.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.05.2019
Transmission Date	

