

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.168 of 2015

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M/s Rajkishore Saw Mill, Labhra- Panchanpur P.S- Tekari, District - Gaya a Proprietorship firm through its Proprietor Sri Rajkishore Prasad Son of Late Parmeshwr Prasad Resident of Village - Khizarsarai, P.S- Khizarsarai, District - Gaya.

... .. 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 4th Floor, Technology Bhawan, Bailey Road, Patna.
3. The Conservator of Forest-cum-Prescribed Officer, Gaya Circle, Gaya.
4. The Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya.
5. Shailesh Kumar, son of Sri Uma Prasad, resident of village Labhra, P.O. Panchanpur, P.S. Tekari, Distt. Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Advocate.
For the Respondent/s : Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 02-01-2019

1. Heard Mr. Vinay Mistry learned counsel for the petitioner and Mr. Prabhat Prakash, learned A.C. to S.C. 21.

2. The petitioner has challenged the order dated 15.1.2014 vide Memo No. 438 dated 23.1.2014 as contained in Annexure-9 passed by the Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya, cancelling the license of the petitioner and also the Appellate order dated 23.7.2014 vide Memo No. 1725 dated 13.11.2014 (Annexure-10) passed by Conservator of Forest-cum-Prescribed Officer, Gaya Circle, Gaya,



in Appeal Case No. 3 of 2014 by which he has dismissed the appeal.

3. Counsel for the petitioner submits that petitioner is owner of the Saw Mill. He has given the Power of Attorney because he was not keeping good health. He is ready to withdraw the Power of Attorney and run the Saw Mill. The license has been cancelled by the impugned order without any valid reason. He has relied upon a judgment of this Hon'ble Court dated 13.10.2017 passed in CWJC No. 24763 of 2013.

4. The counsel for the State submits that petitioner has totally disowned the right and liability of Saw Mill after executing General Power of Attorney in favour of Shailesh Kumar on 24.11.2008. The licence has been renewed since then on the basis of application filed by Power of Attorney holder and his name also finds mentioned on the licence issued after 2008, on the basis of aforesaid Power of Attorney. He has further submitted that in terms of provision of Section 7(5) (a) of Bihar Saw Mills (Regulation) Act, 1990, in the event licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill or saw pit, the licensing officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the license, and forfeit the sum,



if any, or any portion deposited as security for due performance of the conditions subject to which the licence has been granted.

5. Counsel for the State further submits that petitioner has been issued show cause and after giving him opportunity of hearing by a reasoned order, his license has been cancelled by the Licensing Authority, vide Annexure-9 which has been affirmed by Appellate Authority, vide Annexure-10.

6. This Court after hearing both parties finds that there is clear provision in Section 5 of Bihar Saw Mills (Regulation) Act, 1990 for submitting application for license.

Section 5 (b) of Bihar Saw Mills (Regulation) Act, 1990 says that ***“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”***.

7. Section 7 of the aforesaid Act speaks of granting renewal, revocation or suspension of licence.

8. Section 7 (4) of the Act provides the provisions of this Section shall apply to renewal of licence as they apply to grant of licence or refusal to grant a licence.

9. Section 7(5)(a) clearly specifies that ***“if the licensee has parted, in whole or in part with his control over the saw mill***



or saw pit or has otherwise ceased to operate or own such mill or sawpit, the licensing officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the licence”.

10. In the instant case, the petitioner has admittedly executed general Power of Attorney in favour of one Shailesh Kumar on 24.11.2008 (Annexure-1).

11. From perusal of contents of aforesaid General Power of Attorney, it appears that the Power of Attorney holder has been given all the rights by the petitioner to run the aforesaid Saw Mill, file the returns, contest the cases on behalf of Saw Mill and even to apply for transfer of the Saw Mill to some other places. There will be no liability of the petitioner for the aforesaid act done by the Power of Attorney holder.

12. The licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya, has taken note of all the contents of Power of Attorney in the impugned order (Annexure-9) and after considering the averment made in the Power of Attorney and also on the basis of conduct of petitioner since executing the General Power of Attorney in the year 2008, has come to the finding that petitioner was having no concern at any point of time after executing General Power of Attorney for running Saw Mill and filing return or other liability of the aforesaid Saw Mill. The



licensing authority has accordingly cancelled the licence vide Annexure-9 and, subsequently the Appeal filed by the petitioner was also dismissed vide Annexure-10.

13. Counsel for the petitioner has taken shelter of ***Rule 3 (4) (ii) of Bihar Saw Mills (Regulation) Rules 1993 and also Form “C”*** used for renewal of the licence as mentioned in Schedule of the aforesaid Rules.

14. Rule 3 (4) (ii) of the aforesaid Rule speaks that ***“no person shall be permitted to file application on behalf of any person or Company until he encloses executed copy of the power of attorney authorizing him to work on behalf of such person or Company and produces its original or the certificate of registration of such company of which he claims to be a partner before the licensing officer”.***

15. The matter of running different Saw Mills on the basis of Power of Attorney has come for consideration before the Government and by letter No. 3673 dated 22.10.2013 (Annexure-8) issued by the Secretary, Environment & Forest Department, Government of Bihar, Patna, the Divisional Forest Officers have been directed to pass appropriate order on the basis of legal opinion made by the learned Advocate General, Bihar, with regard to the Saw Mills which are running on the basis of the Power of



Attorney as well as the deed of partnership, by which, the licensee has parted, in whole or in part, with control over his Saw Mills. The Divisional Forest Officer has also been directed to pass such order in terms of the provisions of Bihar Saw Mills (Regulation) Act, 1990 keeping in view the principles of natural justice. The copy of aforesaid letter has been annexed as Annexure-8 to the writ petition.

16. The licensing authority after considering the letter of the Government, has issued show cause notice to the petitioner and after due consideration of his case, has found that petitioner has parted control over the Saw Mills after executing the General Power of Attorney on 24.11.2008, and, thereafter, all the acts of the Saw Mill has been done by the Power of Attorney holder Shailesh Kumar, and has accordingly cancelled the licence of petitioner vide order dated 23.1.2014 (Annexure-9).

17. The petitioner has taken plea before the licensing authority that he was not keeping good health and, thereafter, he executed Power of Attorney in favour of Shailesh Kumar to run the Saw Mill on his behalf. He is ready to cancel the Power of Attorney granted to Shailesh Kumar.

18. From the impugned order it appears that petitioner after executing Power of Attorney on 24.11.2008, has never



participated in working of aforesaid Saw Mill. The application for renewal of licence has been filed till 3.12.2013 by the Power of Attorney holder. The licence has been renewed in the name of Rajkishore Prasad and name of Shailesh Kumar also finds mentioned on renewal of licence during the year 2011-2013. The Power of Attorney holder after obtaining the Power of Attorney on 24.11.2008 from the petitioner, had continued to get the licence renewed up to 2013 in the name of petitioner and the name of Power of Attorney holder Shailesh Kumar has also been included in the licence. It further appears that petitioner got the Saw Mill transferred from Khizersarai (Gaya) to Panchanpur Tekari (Gaya) after executing Power of Attorney on 24.11.2008 and since then the Saw Mill is run by Power of Attorney holder Shailesh Kumar. All the acts of Power of Attorney holder show that petitioner has parted with control over his Saw Mill.

19. It is mentioned in appellate order (Annexure-10) that since year 2009 the application for renewal of licence and other applications have been filed by the Power of Attorney holder and not by the petitioner. The renewal of licence was done in the year 2011, 2012 and 2013 in the name of petitioner and Power of Attorney holder.



20. Rule (3(4)(ii) of Bihar Saw Mills (Regulation)

Rules 1993 mentions that original licensee shall execute Power of Attorney authorising the person to work on his behalf. It does not talk about of parting control in whole or in part by original licensee of his Saw Mill or Saw Pit.

21. This Court by the acts of Power of Attorney holder finds that petitioner has wholly parted with his control over the Saw Mill. The licensing authority as well as appellate authority have rightly cancelled the licence of petitioner under Provision of Section 7 (5) (a) of Bihar Saw Mills (Regulation) Act, 1998.

22. Therefore, this Court does not find any illegality in the impugned orders.

23. This writ application is accordingly dismissed.

24. Petitioner will be at liberty to file necessary representation before State Level Committee Wood based Industry, Bihar, which shall be considered by the competent authority in accordance with law without being prejudiced by this order.

S.Ali/-

(Sanjay Priya, J)

AFR/NAFR	AFR
CAV DATE	N/A
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