

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6613 of 2021

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M/s Sharma Saw Mills and Furniture Works Diliwarpur Kaler, P.S. Kaler, District-Arwal, a partnership firm through its Partner Mukesh Kumar Singh, age 55 male, son of Late Ram Niranjana Singh, resident of Village-Belarhi, P.S. Daudnagar, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Environment and 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, Aurangabad Forest Division, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate
For the Respondent/s : Mr. Mithilesh Kumar Singh, AC to SC 15

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

3 25-04-2023 Heard learned counsel for the petitioner and learned counsel for the respondents.

The petitioner has filed the instant application for the following reliefs:

“i) For issuance of a writ in the nature of certiorari for quashing of the order dated 11.1.2020 bearing Memo No.79 dated 14.1.2020 (Annexure-6) passed by the Conservator of Forest-cum- Prescribed Officer, Gaya Circle, Gaya whereby the appeal has been dismissed which was filed against the order dated 20.11.2015 bearing Memo No.50 dated 8.1.2016 (Annexure-5) passed by the Licensing Officer-cum- Divisional Forest Officer. Aurangabad Forest Division, Aurangabad whereby the License No.45 of 1997 has been



cancelled in exercise of its power under Section 7(5) of the Bihar Saw Mills (Regulation) Act, 1990 as well as in terms of Letter No.3673 dated 22.10.2013 issued by the Department of Environment & Forest, Government of Bihar, Patna

ii) For issuance of writ in the nature of Mandamus directing the respondent no.4 to accept the application for renewal of the license and to renew the license under the Bihar Saw Mills (Regulation) Rules, 1993.

iii) For issuance of such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper.”

The case of the petitioner is that Rajeshwar Sharma filed an application for grant of licence in terms of the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to ‘the Act’) and was granted the licence bearing Licence no. 16 of 1997. The same was renewed up to 2013.

Learned counsel for the petitioner submits that pursuant to an agreement entered into between the partners Rajeshwar Sharma and Mukesh Kumar Singh, name of the said Mukesh Kumar Singh was incorporated in the licence. The licensing authority after being fully conscious of the fact of Mukesh Kumar Singh having joined as a partner along with Rajeshwar Sharma, renewed the licence for the period 1.1.2002 to 31.12.2002 vide Annexure-P/1. Learned counsel further submits that the renewal of licence of both partners ie Rajeshwar



Sharma and Mukesh Kumar Singh continued for one year at a time for more than a decade and by way of illustration the petitioner has brought on record the certificates of renewal for the period 1.1.2009 to 31.12.2009, 1.1.2010 to 31.12.2010, 1.1.2011 to 31.12.2011, 1.1.2012 to 31.12.2012 and 1.1.2013 to 31.12.2013 as annexures to the writ application.

Learned counsel submits that the petitioner was surprised to receive a notice alleging violation of the provisions of the licence to which the petitioner replied. By order dated 20.11.2015 (Annexure-P/5) the licensing authority canceled the License no. 45 of 1997 issued to the petitioner alleging violation of section 7(5) of the Act. The appeal preferred by the petitioner was registered as Appeal Case no. 1/2017, however, the same was dismissed by order dated 11.1.2020 (Annexure-P/6) by the Conservator of Forest-cum-Prescribed Officer, Gaya Circle, Gaya.

Learned counsel submits that the name of Mukesh Kumar Singh having been incorporated as far back as in the year 2002, information with respect to the same having been given to the respondent authorities and the licence having been renewed by the respondent authorities incorporating his name, the respondent authorities cannot be permitted to turn back alleging



violation and consequently canceling the petitioner's licence.

The application is opposed by learned counsel appearing for the respondents. Learned counsel referring to the counter affidavit filed on behalf of the Licensing Officer-cum-Divisional Forest Officer, Aurangabad (respondent no. 4) submits that License no. 16 of 1997 was issued in the name of Rajeshwar Sharma under the Act. From perusal of the partnership deed brought on record and transfer of share of the petitioner to his new partner Mukesh Kumar Singh, there is clear cut violation of section 7(5)(a) of the Act and thus, the respondents have rightly canceled the licence of the petitioner. There is no merit in the writ application and the same be dismissed.

Having heard learned counsel for the parties and having perused the material on record, it would be relevant to quote section 7(5) of the Act for ready reference :

"5) If the Licensing Officer is satisfied, either on a reference made to it in this behalf or otherwise, that-

(a) 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 saw pit; or

(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

(c) the licensee has, in the premises of the saw mill or saw pit-wood which he is not able to account for satisfactorily and consequently which is liable for confiscation under Section 10.

Then without prejudice to any other penalty to which licensee



may be liable under this Act the Licensing Officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the licence and forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted."

The question arising for consideration in the instant application would thus be as to whether by the said power of attorney the original licensee in whole or in part transferred the control of the saw mill. From perusal of the contents of the power of attorney (Annexure-P/3) it would transpire that the licensee Rajeshwar Sharma clearly states therein that as a result of his advanced age, he is unable to look after the saw mill on his own and is therefore, appointing Mukesh Kumar Singh as his representative/power of attorney holder and giving him the powers mentioned therein for carrying out the work of the saw mill.

In the opinion of the Court, the contents of the power of attorney cannot be said to be transfer of control by the original licence holder ie Rajeshwar Sharma in favor of Mukesh Kumar Singh. It appears that for this reason even the respondent authorities continued to renew the licence of the petitioner for the period from 2002 to 2013.

There being no violation of the provisions of section 7(5) of the Act or any other provision of the Act, the orders



impugned are not sustainable and fit to be set aside. Thus, the order dated 11.1.2020, (Annexure-P/6) passed by the Conservator of Forest-cum-Prescribed Officer, Gaya Circle, Gaya, is hereby set aside.

The writ application stands allowed.

(Partha Sarthy, J)

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