

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2793 of 2016

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M/s Rinku Furniture And Saw Mill, Natwar, P.S. - Natwar, District- Rohtas, a proprietorship firm through its Proprietor Ayodhya Mistri, Son of Late Vishwanath Mistri, Resident of Village - Natwar, P.S. - Natwar, District - Rohtas.

... .. 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 Prescribed Officer - cum - Conservator of Forest, Wildlife Circle, Patna.
4. The Divisional Forest Officer, Rohtas Forest Division, Sasaram

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vinay Mistry, Adv
For the Respondent/s	:	Mr.Sunil.Kumar.Mandal, SC3
	:	Mr. Bipin Kumar, AC to SC3

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 01-08-2024

1. This Writ Petition is filed seeking relief in the nature of *Certiorari* for quashing of Order bearing Memo No. 1587 dated 31.12.2015 (Annexure-10) passed by the Presiding Officer-cum-Conservator of the Forest, Wildlife Circle, Patna in Appeal Case No. 01 of 2015 whereby the Order bearing Memo No. 270 dated 02.01.2014 (Annexure-9) passed by the Licensing Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram confirming the orders whereby the license of the petitioner bearing No. 55 of 1996 was cancelled in terms of the Letter No. 3673



dated 22.10.2013 issued by the Department of Environment and Forest, Government of Bihar, Patna.

2. Further relief sought was to directing the respondents to renew the license till the decision was taken by the State Government as approved by the CEC in terms of Letter No. 1601 dated 26.03.2015 written by Mr. Gopal Singh, Standing Counsel, Bihar and the Letter No. 2345 dated 30.06.2015 issued by PCCF, Bihar, Patna in the facts and circumstances of the case.

3. Admittedly the second relief is sought to renew the license till the decision is taken by the State Government for which a letter was addressed by Mr. Gopal Singh, Standing Counsel. Admittedly, on perusal of the said letter, it is evident that it is an interse document between the Standing Counsel and the Department which cannot be termed as impugned order to grant any relief to the petitioner.

4. The brief facts culled out of the petition are that the petitioner applied for grant of license and subsequently, a license was granted in his favour bearing Licence No. 55 of 1996 which is renewed till 2013 (Annexure-1 is the renewal of the license of the petitioner till 2013).

5. It is the specific contention of the Learned counsel for the petitioner that a lease agreement was entered between the



petitioner and one Bhrigunath Shah on 11.09.2000 for the land in Khata No. 183, Plot No. 142 measuring an area of 1 Katha 11 Dhur for establishment of the Saw Mill and that the petitioner kept Bhrigunath Shah as his partner in the timber business. Subsequently, Bhrigunath Shah retired from the partnership business. A dispute arose, when M/s. Patel Saw Mill, Gosala Road, Khagaria was not included in the seniority list for which the said Saw Mill preferred a Writ petition i.e. C.W.J.C. No. 20419 of 2012. The said Writ petition was disposed of by this Court vide Order dated 02.11.2012 giving liberty to the said petitioner to represent before the Principal Chief Conservator of Forest, Bihar, Patna for inclusion of its name in the Seniority list. The Principal Chief Conservator of Forest, Bihar addressed a letter to the Secretary, Department of Environment and Forest, Bihar vide Letter No. 685 dated 05.03.2013 stating that M/s Patel Saw Mill has not been included in the Seniority list in terms of Clause 3(i) (vii)(Kha) of the Resolution No. 2675 dated 30.08.2010, on the ground that the license of Shri Praveen Kumar Patel has parted in whole with control over his Saw Mill by Power of Attorney and Partnership Deed for which an opinion was also sought by the Advocate General, Bihar and pursuant to the legal opinion the Additional Chief Conservator of Forest-cum-Chief Wildlife



Waden, Bihar, Patna addressed a letter to the Secretary, Department of Environment and Forest, Bihar, Patna dated 18.09.2013 stating that it would be appropriate that the Divisional Forest Officers are directed to complete the process in terms of the provisions of the Bihar Saw Mill and Regulation Act, 1990 keeping in view the Principles of Natural Justice. Further another Letter dated 22.10.2013 bearing No. 3673 was issued by the Secretary, Environment and Forest Department, Government of Bihar, Patna directing the Forest Divisional Officers to pass appropriate orders basing on the legal opinion given by the Learned Advocate General, Bihar in regard to the Saw Mills which are running on the basis of Power of Attorney as well as the Deed of Partnership by which the license has parted in whole or part with whom the control is over the Saw Mills. The Order dated 29.01.2014 vide Memo No. 270 was passed by the Licensing Officer-cum-Divisional Forest Officer, Forest Division, Rohtas (impugned order) whereby the license of the petitioner was cancelled (vide Annexure-9).

6. Being aggrieved by the same, the petitioner has preferred an Appeal before the Officer-cum-Conservator of Forest, Wildlife Circle, Patna in Appeal Case No. 01 of 2015. After hearing the parties, the order of cancellation of license dated



29.01.2014 was confirmed vide Memo No. 1587 dated 31.12.2015 (Annexure-10) for which the present Writ Petition is filed.

7. It is the contention of the Learned counsel for the petitioner that the guidelines framed under Letter No. 2673 dated 22.10.2013 was challenged before the CEC in W.B.I. No. 2468 of 2013 and 2489 of 2013. After hearing the parties the CEC has indicated that *“the State could consider amending its Rules so that bonafide/honest change of ownership of license, due to genuine cases of death, transfer to kith and kin, inclusion of new partners and such like could be recognized for the renewal of the license.”* It is further contention of the Learned counsel for the petitioner that Section 7(5)(a) of the Bihar Saw Mills (Regulation) Act, 1990 does not provide that the licensee has parted, in whole or in part with his control over the Saw Mill by the Power of Attorney and the Deed of Partnership and as such the issuance of the Letter No. 3673 dated 22.10.2013 of the Secretary, Environment & Forest Department, Government of Bihar, Patna is bad in law.

8. Learned counsel for the Respondent/State contended that the Writ Petition disclose about the material submissions made by M/s Patel Saw Mill which is not at all relevant to the present facts and circumstances of the case. Admittedly, Patel Saw Mill case relates to inclusion of the Seniority list of the Saw mills



wherein this Court has passed orders in C.W.J.C. No. 20419 of 2012 giving liberty to M/s Patel Saw Mill to file a representation before the Principal Chief Conservator of Forest, Bihar. Therefore, the contentions of M/s Patel Saw Mill cannot be considered at par with the circumstances of that of the petitioner. It is the only contention of the Learned counsel for the petitioner that the impugned order does not confirm the provisions of the Bihar Saw Mills (Regulation) Act, 1990 and the Rules framed thereunder disclose that the Power of Attorney holder and the partner was authorized to make an application for grant of licence and renewal of the licence. But in the present case the partner has retired from the partnership deed. It is also the contention of the Learned counsel for the petitioner that the licence was renewed from 2003 to 2013 and there is no evidence before the Licensing Officer that the petitioner has control over the Saw Mill and such cancellation of licence is illegal and arbitrary in nature and further the Appellate Authority has also failed to consider the legal aspects while framing the orders of the Licensing Officer.

9. A detailed counter affidavit was filed by the learned counsel for the respondent nos. 1 to 4. The counter affidavit disclose that M/s Rinku Furnitures Saw Mill work contract, Natwar was granted to Sri Ayodhya Mistri under Section 7 of



Bihar Saw Mills (Regulation) Act, 1990 vide License No.55/1996 on 06.06.1996. As instructed by the letter dated 22.10.2013 through letter No. Van Kikray 18/13, 3673 of Government of Bihar, Department of Environment & Forest, a Show Cause Notice dated 06.12.2013 bearing letter no. 3984 was issued to Sri Ayodhya Mistri wherein Shri Munna Prasad, s/o Sri Brigunath Shah who is the Power of Attorney holder of Sri Ayodhya Mistri to appear before the Licensing Officer-cum-District Forest Officer on 09.12.2013, as to why the licence of the Saw Mill should not be cancelled under Section 7(5)(a) of Bihar Saw Mill (Regulation) Act, 1990. Accordingly, on 09.12.2013 Shri Munna Prasad alone appeared before the Licensing Officer-Cum-Divisional Forest Officer and prayed for another date and again on 12.12.2013, Shri Munna Prasad appeared alone and filed an affidavit stating that Shri Ayodhya Mistry is the owner of the Saw Mill and due to his illness, Mr. Munna Prasad who is working as Munsif is looking at the day to day affair of Saw Mill. Further the affidavit of Sri Ayodhya Mistri clearly disclose that he has never given any Power of Attorney or Partnership on the basis of any deed to any person.

10. Admittedly, Ayodhya Mistry himself never appeared before the Licensing Officer-Cum-Divisional Officer, Rohtas Forest Division, Sasaram. The counter affidavit further disclose



that on the basis of record, it was found on 17.07.2003, Sri Ayodhya Mistry gave Power of Attorney in favour of Shri Munna Prasad. The contents of the Power of Attorney disclose that Shri Munna Prasad will continue to look after all the works of the Saw Mill even after the death of Ayodhya Mistry. The Power of Attorney dated 17.07.2003 was filed alongwith the counter affidavit which is Annexure B. Basing on the said letter, it was found by the Licensing Officer that Ayodhya Mistry (the petitioner) has parted with his control over the Saw Mill in whole or in part. Accordingly Section 7(5)(a) of Bihar Saw Mill Regulation Act, 1990 impose a ban on a licence holder to part his control over the Saw Mill in whole or in part. It is relevant to mention that Section 7(5)(a) which reads as follow:-

“If the licensing officer is satisfied, either on a reference made to it in his behalf as other wise, that-

(a) the licensee has parted, in while or in part with his control over the saw mill or saw pit or has otherwise leased to operate or own saw mill saw pit: or

(b).....

(c).....

Then without prejudice to any there penalty to which licensee may be liable under this Act the licensing Officer may, after giving the licensee an opportunity of show cause, revoke, or suspend the license & forfeit the sum, if any or any portion thereof



deposited as security for the due performance of the conditions subject to which the license has been granted.”

11. Therefore, the Licensing Officer-cum-Divisional Forest Officer cancelled the license of M/s Rinku Furniture Works vide order dated 29.01.2014 (as per Annexure-9 of the writ petition). Further the petitioner has filed an Appeal bearing Case No. 01 of 2015 (Ayodhya Mistri Proprietor of M/s Rinku Furniture and Saw Mill Vs. the Licensing Officer-cum-Divisional Forest Officer) before the Appellate Authority and the Appellate Authority was pleased to dismiss the appeal confirming the orders of the Licensing Officer-cum Divisional Forest Officer on the same ground.

12. It is the specific contention of the Learned counsel for the respondents that on 09.12.2013, Sri Munna Prasad having Power of Attorney appeared before the Licensing Officer-Cum-Divisional Forest Officer and prayed for another date. Again on 12.12.2013, Sri Munna Prasad appeared before the Licensing Officer and filed an affidavit stating that Sri Ayodhya Mistri is the owner of the Saw Mill and due to his illness, Sri Munna Prasad who is working as Munsu to look after the day to day affair of Saw Mill. Further through the affidavit Sri Ayodhya Mistri said that he had never given any Power of Attorney of Partnership of Saw Mill



on the basis of deed to any person. Admittedly, the facts that remain before the Court is that Ayodhya Mistri himself has never appeared before the licensing authority and basing on General Power of Attorney Sri Munna Prasad alone has appeared before the authority.

13. Basing on the record, Licensing Officer-cum-Divisional Officer found that on 17.07.2003 Ayodhya Mistri gave Power of Attorney in favour of Munna Prasad. It is also mentioned in the Power of Attorney that Munna Prasad will continue to look after all the works of Saw Mill even after the death of Ayodhya Mistri, as per Annexure-B enclosed with the counter affidavit. On the basis of the said facts, the Licensing Authority had cancelled the licence of Ayodhya Mistri. Being aggrieved by the same, the petitioner preferred an appeal. Even before the Appellate Court, Ayodhya Mistri (petitioner) contended that he has given Power of Attorney to Munna Prasad to look after his business and it is not illegal to grant Power of Attorney to any person to operate business. Before the Appellate Authority, there are two affidavits of the petitioner dated 12.12.2013 and 17.07.2003 wherein in the affidavit dated 12.12.2013 it is mentioned that Ayodhya Mistri (petitioner) is the owner of the Saw Mill and Munna Prasad is working as Munsif. Whereas in the the Affidavit dated 17.07.2003



of the petitioner it is evident that he has granted Power of Attorney to Munna Prasad so that Munna Prasad can carry the business of Ayodhya Mistri under licence of the Saw Mill No. 55 of 1996 and to fulfill his responsibilities during his life and even after his death. Except denying the fact that he has not transferred the licence, the petitioner has never rebutted the fact that he has not given any affidavit to Munna Prasad. As per the affidavit dated 17.07.2003 that is very clear that the petitioner has given his full responsibilities to look after his business not only during his life time even after his death. As per Section 7(5)(a) of Bihar Saw Mills (Regulation) Act, 1990 there is a clear provision that if a licensee has parted with his rights over the Saw Mill completely or partially, the Licensing Officer is liable to cancel the licence.

14. The Learned counsel for the petitioner also relied on the judgment dated 10.11.2022 of this Court passed in ***L.P.A. No. 310 of 2019 (M/S Raj Kishore Saw Mill Vs. The State of Bihar and Ors.)*** contending that in the similar facts and circumstances, this Court has remitted the matter to the Licensing Authority to examine the records. In that case, the Power of Attorney was executed by the petitioner in favour of third party and orders was passed to follow in accordance with law. Therefore, it is contended that the same order may be passed in this case also. But on perusal



of the contents of the judgment, it is evident that licence of the petitioner in M/s Raj Kishore Saw Mill (Supra) was cancelled on the sole ground that he part control of the Mill to another through Power of Attorney only for a limited purpose that too on the account of his health issues, but the affidavit of the petitioner dated 17.07.2003 clearly disclose that he has handed over the business to Munna Prasad not only for his lifetime but also after his death. Therefore, the said judgment of this Division Bench (Supra) of this Court does not apply to the facts and circumstances of the present case.

15. On perusal of the entire record, this Court finds that there is no irregularity in orders passed either by the Licensing Authority or by the Appellate Authority, so as to set aside them.

16. With the above discussion, the writ petition is dismissed as it is devoid of merits.

17. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
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