
(2002) 05 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 2205 of 2002

Awadhesh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 5, 5(a), 5(b)

Citation : (2002) 2 BLJR 1427 : (2002) 3 PLJR 445

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

The petitioner, who was operating a saw mill has come to this Court seeking a direction against the respondents for grant/renewal of a licence for running the saw mill as according to the petitioner he is entitled to have the licence/renewal of the same in accordance with law. The further prayer is that respondents be directed to accept the renewal fees.

2. It would be necessary to note that the entire case of the present petitioner is based upon the interpretation of Section 5 of the Bihar Saw Mills (Regulation) Act, 1990. The said Section reads as under:

5. Application for licence.--On and from the appointed day:

(a) no person shall establish a saw mill or a saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act;

(b) 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:

Provided that for the period of thirty days and thereafter the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence under this Act and he was operating the saw mill or saw pit

accordingly.

In the English version as printed in the book the proviso is shown in separate paragraph and it has been appreciated by the authorities and the owners/operator of the saw mill that the proviso covers Clause (a) and Clause (b) of Section 5 of the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as "1990 Act"). The Hindi version, the authentic one, shows that proviso is appended to Clause (b) of Section 5 and not to Clause (a) of Section 5 of 1990 Act. From a perusal of Clause (a) it would clearly appear that from the appointed day no person shall establish a saw mill or a saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act. Clause (a) was covering the contingencies in relation to the intention of those persons who wanted to start or establish a saw mill or a saw pit. In such a case it would be prudent to hold that by a person who does not have a licence in his favour or who was not operating a saw mill and saw pit before coming into force of 1990 Act was not to lose anything it was not allowed to operate or establish a saw mill or a saw pit. If the proviso is read with Sub-clause (a) it would lead to a chaotic condition/situation, if the proviso is read with Clause (a) it would mean that a person though not entitled to establish or operate the saw mill or a saw pit may make an application to the concerned licensing officer awaiting its disposal within 30 days and immediately thereafter start operating the saw mill/saw pit.

Clause (b) of Section 5 of the 1990 Act says that on and from the appointed day 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 1990 Act on an application made by such person within a period of thirty days from such date. From a very perusal of Clause (b) it would clearly appears that Clause (b) regulates those saw mills/saw pits which were already in existence before enforcement of 1990 Act. If the proviso is read with Clause (b) of Section 5 it would simply mean that a person who was having a saw mill/saw pit in existence and was operating the same was allowed to operate the same unless an application made by him was decided within thirty days. The only concession by way of proviso was that if there is absolutely inaction or non-action on the part of the forest authority/licensing authority then such person should not suffer because of inaction or non-action on the part of the forest authority/licensing authority. It is not uncommon in the administrative areas that the officers are not ready to come out of their slumber. Therefore, the deeming provision provides that the deemed licence is granted to those persons who are having their business in existence for earning their livelihood. If the proviso is read with Clause (b) of Section 5 of the Act it would simply appear that for the first thirty days the person having in existence saw mill would not be allowed to operate the same but if his application for grant of licence is not disposed of finally within thirty days then non-action on the part of the authority shall open the gates for him and he will be allowed to operate the saw mill/saw pit.

Clause (a) and Clause (b) of Section 5 are covering different situations and

contingencies. Clause (a) refers to those persons who are eager to start or establish their saw mills or saw pits while Clause (b) covers a situation in relation to the persons who are already having their saw mills or saw pits, have made an application and the application is pending consideration beyond 30 days. A bare perusal of the original text and of the principles under which the proviso has been appended would make it clear that the proviso is appended to govern the cases of persons who are covered under Clause (b) of Section 5 of the Act.

4. In a number of cases this Court found that since after 1990 hundreds of the persons made applications to the concerned licensing authorities, awaited its disposal for 30 or more days and immediately thereafter established and started operating the saw mill/saw pit taking the advantage of the proviso as available in Section 5. Number of cases show absolute inaction and non-action on the part of the Forest authority/licensing authorities because on one side they did not decide application for grant of the licence and at the same time either in collusion or in connivance with the saw mill/saw pit operators permitted them to run the saw mill/saw pit under mis-interpretation of the proviso. There are number of cases where the application was made under Clause (a) of Section 5 of the Act and thereafter the saw mills/saw pits were established and for long many years the renewal fee was deposited on demand made by the licensing authorities.

5. The petitioner appears to be one of those persons who under the belief that the proviso is applicable to Clause (a) and Clause (b), established and started operating saw mill/saw pit. According to the petitioner, after establishment of the saw mill he operated the same and under the directions of the licensing authority he was depositing the renewal fees from time to time.

6. Taking into consideration the concern of all the Courts in the Country including the concern of the Apex Court relating to forest and their denuding this Court required the Conservator of Forest to appear in Court and affirm on oath that whether such applications are pending or not, how many applications are pending for consideration and how many operators have established their saw mills/saw pits under the deeming provision, after some fuss the authorities have made a straight statement in the Court saying that no applications which are older than one year are pending consideration before the licensing authorities, except ten applications which are pending because of the pendency of the writ applications in this Court. The authorities have submitted before the Court that they are taking strict view of the matter and are directing closure of all such mills which are being operated under the deeming provision. It is also contended by them that the State authorities specially Forest authorities are giving a serious thought to the growth of the forest de novo. According to them, they would not allow any person to operate the saw mills/saw pits under the deeming provision. They also accept before the Court that according to their understanding Clause (b) shall only be governed by the proviso and the said Proviso shall not control or govern the Act and operation of Clause (a) of Section 5 of the Act. In view of the said statements made by the Forest Officers specially by the Chief Conservator of

Forest I am of the opinion that nothing further is required to be done in the matter relating to operation of saw mills under the deeming provision. I sincerely hope and expect from the Forest authorities that they shall prove true to their words and save Mother Earth and would not allow anybody to denude if of its forest wealth.

7. So far as the petitioner's case is concerned, according to the respondents his application for grant/renewal of the licence has already been turned down. Undisputedly the order refusing to grant licence can be impugned in a duly constituted appeal. The petitioner is free to take up the matter in appeal. At this stage learned Counsel for the petitioner submits that not only the application has been rejected but prior to this coming to this Court all his appliances, apparatus and artisans have been seized by the Forest authorities. He submits that when authorities were of the opinion that the proviso would control and govern both the clauses of Section 5, then there is no scope to hold that the petitioner was running or operating the saw mill/saw pit illegally or unauthorisedly. The prayer by the petitioner is that all the articles which have been seized may be returned back to him.

8. In the opinion of this Court, this prayer can also be made by the petitioner before the appellate authority. The appellate authority shall take into consideration the facts and circumstances and the observation made by the Division Bench judgment of this Court in the Letters Patent Appeal No. 1458/2000. For the benefit of the respondents the said observations are quoted below:

In my opinion, while such of the mills the licence for which has already expired, may be allowed to die natural death, provided some of them are identified as viable/sustainable saw mills to be allowed to run, all the saw mills running under valid licence must be allowed to continue till expiry of the term of the licence. The question of their renewal will abide by the result of the identification undertaken by concerned authorities of the State, as indicated in the said judgment.

9. In the present matter, the submission of the petitioner cannot be taken to be a false one. From April, 1990 if number of mills were operating pending consideration their application for grant of new licence, only under the deeming provision, then apparently mala fide cannot be found against the present petitioner. I would leave the subject for decision to the jurisdiction and discretion of the appellate forum. The petitioner, is so advised, may file the appeal and may raise the question relating to release of articles which have been seized.

10. So far as the grievances raised by the petitioner are concerned, the same stand disposed of but the matter be listed for consideration on 28th of June, 2002 as already directed.

11. Let a copy of this order be given to the State Counsel.