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**(2015) 01 PAT CK 0100**

**In the Patna High Court**

**Case No :** CWJC Nos. 1562, 16323 of 2013 and 11529 of 2009

Sharma Saw Mill and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 22-01-2015

**Acts Referred:**

Bihar Saw Mills (Regulation) Act, 1990 — Section 12, 7(5)(a)

**Citation :** (2015) 2 PLJR 208

**Hon'ble Judges :** Jyoti Saran, J

**Bench :** Single Bench

**Advocate :** Vinay Mistry, for the Appellant; Bipin Kumar, Advocates for the Respondent

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## **Judgement**

Jyoti Saran, J.

1. Heard Mr. Vinay Mistry, learned counsel appearing on behalf of the petitioners, Mr. Bipin Kumar, learned Assisting Counsel to Standing Counsel No. 24 for the State in CWJC No. 1562 of 2013, Mr. Deepak Kumar Jamuar, A.C. to AAG-6 in CWJC No. 11529 of 2009, Mr. Dhurjati Kumar Prasad, learned Government Pleader No. 7 in CWJC No. 16323 of 2013, Mr. Abhay Shankar Singh for the private respondents and Mr. Gyan Shankar for the Bihar State Sugar Corporation Limited.

Re: CWJC No. 16323 of 2013:

Mr. Vinay Mistry, learned counsel appearing for the petitioner prays for withdrawal of CWJC No. 16323 of 2013.

2. As prayed, the writ petition is dismissed as withdrawn.

Re: CWJC No. 11529 of 2009:

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CWJC No. 1562 of 2013:

3. In CWJC No. 11529 of 2009 the petitioner has questioned the order dated 23.6.2009 passed by the Appellate Authority-cum-Conservator of Forest, Muzaffarpur Circle, Muzaffarpur in Appeal No. 5B of 2007 whereby the appellate authority while allowing the appeal filed by the private respondent has directed the licensing authority to renew the licence of the private respondent and also directed for institution of a criminal case against the erring officials as well as the writ petitioner.

4. While the said matter was pending consideration before this Court that a seniority list of the saw mills in the district of Samastipur has been prepared and which includes the name of the private respondent. The said order has been questioned by the petitioner in CWJC No. 1562 of 2013. Considering that the outcome of CWJC No. 1562 of 2013 entirely depends on the outcome of CWJC No. 11529 of 2009 I shall be referring to the pleadings made in CWJC No. 11529 of 2009 for the sake of convenience until clarified by specific reference to the other writ petition.

5. The indisputable facts of the case is that the saw mill in question lies within the premises of the Bihar State Sugar Corporation Limited, Samastipur, District-Samastipur for which a licence was issued in favour of the private respondent bearing No. 42 of 1994 under the provisions of the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as "the Act") and the Rules framed thereunder. In between this licence stood transferred in favour of the writ petitioner who operated the saw mill for a few years until an objection to that effect was raised by the private respondent in 2001 and which has ultimately culminated in the other (sic- order?) impugned passed by the Appellate Authority placed at Annexure-6 to the writ petition recognizing the right of the private respondent to the licence and direction for renewal thereof. It is following the recommendation of the private respondent as a licensee under "the Act" that the Three-Member Committee has included his name in the seniority list and being aggrieved by such decision, that the petitioner has filed CWJC No. 1562 of 2013.

6. Mr. Vinay Mistry, learned counsel appearing on behalf of the petitioner has seriously endeavored to question the impugned order inter alia on grounds that the saw mill lying within the premises of the Sugar Mill its ownership exclusively lies with the Sugar Corporation. It is contended that since it is at the discretion of the General Manager of the Sugar Corporation that the licence though initially issued in the name of the private respondent was subsequently transferred in his name in the year 1998 and where after he has operated the saw mill, a right is vested in him and the private respondent at this stage cannot question the same. He submits that the order passed in appeal is also without jurisdiction inasmuch as an appeal under Section 12 of "the Act" exclusively lies against an order inter alia, refusing renewal of licence and since in the present case there is nothing on record to demonstrate that any such order was passed that the Appellate Authority has exercised appellate power wholly without jurisdiction. He further submits that since the Corporation has not stood up to support the private

respondent rather the lease for the saw mill has been entered with the writ petitioner hence he has a legal right to run the saw mill and in which event the appellate order as well as inclusion of the private respondent in the seniority list is unsustainable. Mr. Mistry with reference to a letter of the licensing authority dated 5.12.2013 addressed to the Conservator of Forest placed at Annexure-12 in which the licensing authority after discussing the entire matter has sought for guidelines submits that in the circumstances where the forest authorities themselves are not sure about their decision, any interference with the right of the petitioner by the appellate order is premature.

7. The argument of Mr. Mistry has been vehemently contested by learned counsel for the State, learned counsel for the private respondent as well as the counsel for the Sugar Corporation. Mr. Abhay Shankar Singh, learned counsel appearing for the private respondent has submitted that there is no dispute that the licence was issued under "the Act" in favour of the private respondent and the provisions of "the Act" prohibits transfer of any such licence. He thus submits that in no circumstances the licence issued in favour of the private respondent would be transferred in favour of the writ petitioner and it is recognizing such illegality that the contravention stands removed by the appellate order.

8. I have heard learned counsel for the parties and I have perused the materials on records.

9. It is not in dispute that the licence was issued in favour of the private respondent though intermittently it got transferred in the name of the writ petitioner which was objected to by the private respondent before the statutory authorities and the grievance not being redressed that the private respondent took recourse before the Appellate Authority and which has resulted in the impugned order. That there is no written order refusing renewal of licence to the private respondent as objected to by Mr. Mistry, would not be an impediment to the legal right of the private respondent to avail of the appellate remedy. A refusal to grant renewal of licence can be oral or by a written order. That the licence of the private respondent has not been renewed, itself is an implied refusal and sufficient to move the appellate forum. The opening lines of the appellate order impugned in the writ petition reflects that it is being aggrieved by non-renewal of the licence that the private respondent had preferred the appeal.

10. The issue that the saw mill belongs to the Sugar Corporation can be of no help to the writ petitioner to contest the impugned order especially where the Corporation has not chosen to contest the right of the private respondent to the licence. The saw mill admittedly is situated within the premises of the Sugar Corporation at Samastipur and the licence has been issued in favour of the private respondent recognizing its location. Thus until such time that the Sugar Corporation raises any objection as to the continuation of the saw mill within its premises in my opinion, the writ petitioner would have no right to raise any such objection. Section 7(5)(a) of "the Act" and the Rules framed thereunder creates a prohibition over a transfer of licence and thus the licence in question in no

circumstance could have been transferred in favour of the writ petitioner. In fact if the writ petitioner was found entitled to a grant of licence under "the Act" the statutory authorities were fully empowered to issue a fresh licence in his favour but certainly a licence issued in favour of the private respondent could not have been transferred in favour of the petitioner and it was this gross infirmity which was brought to the notice of the appellate authority and stands rectified.

11. There being no infirmity in the order of the appellate authority impugned in CWJC No. 11529 of 2009 warranting interference, I am not persuaded with the arguments of Mr. Mistry for granting indulgence to the relief prayed and as a consequence the writ petition is disposed of.

12. I would be adverting next to the challenge made by the petitioner to the inclusion of the private respondent in the Seniority List of Saw Mills in CWJC No. 1562 of 2013.

13. Since this Court has not found any infirmity in the order passed by the Appellate Authority recognizing the right of the private respondent for renewal of his licence bearing No. 42/94 and it is by virtue of his status as such that he has been included in the seniority list of the saw mill in the district of Samastipur hence in view of such circumstances the petitioner has no jurisdiction to question the right of the private respondent as to his inclusion in the seniority list. CWJC No. 1562 of 2013 is also accordingly disposed of.