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Court : Madhya Pradesh

Decided On : Apr-12-2005

Reported in : AIR2005MP195

Judge : N.K. Mody, J.

Acts : Madhya Pradesh Kasta Chiran (Viniyam) Adhinyam, 1984 - Sections 6, 6(5) and 9

Appeal No. : W.P. No. 1076 of 2004

Appellant : Ajay Kumar

Respondent : Divisional Forest Officer-cum-licensing Officer and ors.

Advocate for Def. : A.S. Kutumbale, Addl. Adv. General

Advocate for Pet/Ap. : S.R. Saraf, Adv.

Judgement :

ORDER

N.K. Mody, J.

1. This petition shall also dispose of W.P. No. 905/2004 which is identical in nature.

2. Being aggrieved by the order Annexure-P/9 dated 18-3-2004 passed by Divisional Forest Officer, Indore respondent No. 1 herein whereby licence granted to the petitioner under the provisions of M.P. Kasta Chiran (Viniyam) Adhiniyam, 1984 (here in after shall be referred as 'Act') has been cancelled and the order dated 26-6-2004 vide Annexure-P/10 passed by respondent No. 2 whereby the appeal filed by the petitioner was dismissed, the present petition is filed.

3. Short facts of the case are that originally M/s. Bharat Timber Trading Company, 49, Nivlakha, Indore was having the licence for operating the saw mill under the provisions of the Act. This licence was granted in the year 1984 and was renewed from the year 1985 to the year 1992. On 21 -12-1992 licensee informed the respondent No. 1 that saw machines have been sold with licence to Danvir Singh and Balbir Singh. Thereafter, both the purchasers i.e. Danvir Singh and Balbir Singh applied for grant of licence and separate licenses were given to both of them. Danvir Singh sold the saw machine with licence to the petitioner on 30-11 - 1994. Vide order dated 1-8-1995 respondent No.1 after obtaining the permission from respondent No. 2 upon the application filed by the petitioner granted the licence to the petitioner. As the petitioner purchased the saw machines from Danvir Singh the licence which was granted to the petitioner on 22-9-1995 was renewed from time to time. Petitioner again moved an application for renewal of licence which was under the provisions of the Act before the respondent No. 1 but during pendency of the application for renewal, a show-cause notice was issued on 16-10-2003 by the respondent No. 1 to the petitioner wherein It. was alleged that since the licence was in the name of Danvir Singh and Balvir Singh, thus, the licence could not have been issued to two persons which has wrongly been issued. Therefore, the petitioner was asked why the licence granted to the petitioner should not be cancelled. The show-cause notice was duly replied by the petitioner. Vide order dated 18-3-2004 Annexure-P/9 the licence was cancelled holding that in the year dated 28-1-1993 no where it is stated that the saw machines has been purchased by Danvir Singh and Balvir Singh separately and after obtaining the separate licence both the licensee changed the place and also started the work from new place. Aggrieved by this, the petitioner preferred an appeal before the respondent No.2 which was also dismissed vide order dated 26-6-2004 Annexure-P/10 on the ground that a fraud was played in obtaining the

licence and in playing the fraud the licensee and the Accountant of the office of respondent No. 1 joined their hands.

4. In the similar circumstance, the licence was cancelled in W.P. No. 905/2004 by the respondent No. 1 vide order dated 18-3-2004 by Annexure-P/14 and the appeal was dismissed vide order dated 26-6-2004 by the respondent No. 2 vide Annexure-P/18.

5. Learned counsel for the petitioner submits that the petitioner purchased the saw machines from Danvir Singh and Danvir Singh and Balvir Singh purchased the saw machines from M/s. Bharat Timber Trading Company. Learned counsel submits that prior to purchase of saw machines by the petitioner there were two licenses in the ' name of Danvir Singh and Balvir Singh and after purchase of the saw machines the licence was issued to the petitioner and petitioner was operating the saw mill since 1995. Learned counsel further submits that the licence can be revoked under Section 6 of the Act to Sub-clause (5) of Section 6 which reads as under :-

6. Grant, renewal, revocation or suspension of licence :-

(1)to(4)...

(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 saw mill or saw pit; or

(b) the licensee 1ms, 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, wo6d which he is not able to account for satisfactorily and consequently which is liable for confiscation under Section 9;

then without prejudice to any other penalty to which the 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.

6. Learned counsel for the petitioner submits that none of the conditions were existing for issuing the show-cause notice for revocation of the licence. Hence, the order is without Jurisdiction. It is further submitted that in the show-cause notice it was not the case of respondent No. 1 that any fraud was played by the petitioner but in the order passed by respondent No. 2 it is mentioned that petitioner has obtained the licence by playing fraud.

7. Shri. A.S. Kutumbale, learned Additional Advocate General for the respondent Nos. 3 and 4 submits that; the licence was issued initially in the name of M/s. Bharat Trading Company for two saw machines which was renewed from time to time till 1992. Thereafter permission was given to sell the saw machines jointly to Danvir Singh and Balvir Singh. Therefore, in the circumstance one licence at the most could have been issued jointly in favour of Danvir Singh and Balvir Singh, while separate licences were issued in favour of Danvir Singh and Balvir Singh. Learned Additional Advocate General placed reliance on Annexure-R/6 dated 26-4-1984 which is a letter issued by the State Government to Chief Conservator of Forest; wherein it is mentioned that if there are more than one saw mill in one premises where the wood is being cut by electric or mechanic power, then it will be treated as one saw mill. Another letter dated 23-12-2003 which was issued by Additional Chief Conservator of Forest to Conservator of Forest wherein it is mentioned that in case of death of licensee the licence will remain one even if there are more than one saw machine. It is further mentioned that in any case one licence cannot be converted in more than one.

8. From perusal of record, it is evident that the licence was issued in the name of M/s. Bharat Timber Trading Company, the saw machine was sold by the licensee to Danvir Singh and Balvir Singh on 21-12-1992 and two licenses were issued by the respondent No. 1 in the name Danvir Singh and Balvir Singh, thereafter Danvir

Singh has sold the saw machine which was purchased by the petitioner on 30-11 - 1994 and upon his application the licence was issued to the petitioner in the year 1995 which was renewed till 2002. From perusal of the licence it is also evident that the changed name is mentioned in the licence. From the notice Annexure-P/7, it is not clear that under which clause of Sub-Section (5) of the Section 6 of the Act, the licence granted earlier has been asked to be revoked, as there is no fault on the part of the petitioner or any of the conditions of the licence has been breached. From perusal of the order, it is not evident that how the petitioner has played the fraud in obtaining the licence.

9. In the circumstance, the order Annexure-P/9 dated 18-3-2004 passed by respondent No. 1 and the order Annexure-P/ 10 dated 26-6-2004 are set aside with a direction to the respondent No. 1 to consider the application for renewal of the licence, within a period of three months.

10. With aforesaid observation, this petition is disposed of. No order as to costs.

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