IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 205 of 2011

M/s Amar Saw Mill, Murhu, through its Proprietor-Bhola Shankar Sahu, son of Late Amar Sahu, resident of Village-Murhu, P.O. & P.S. – Murhu, District-Khunti.

Petitioner

Versus

1.The State of Jharkhand through the Chief Secretary, Project Building, P.O. & P.S. Dhurwa, District-Ranchi.
2.The Prescribed Officer-cum-Conservator of Forest, State Trading Circle, Ranchi.
3.The Licensing Officer-cum-Divisional Forest Officer, Khunti Division, Ranchi. **...** **Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Ajit Kumar, Advocate
For the Respondent : Mr. Shashank Shekhar, AC to AAG V

Order No. 09/Dated: 6th October, 2023

1. The instant writ petition, under Article 226 of the Constitution of India, is filed against order dated 06.05.2010 passed in Appeal Case No. 6 of 2004, affirming order dated 07.11.2008 passed in Licence Case No. 4 of 2005, whereby decision has been taken by the authority concerned that the order dated 19.07.2004 passed in Licence Case No. 4 of 2004 cancelling the Licence No. 1/04 of the petitioner is just and the petitioner is not entitled to any relief.

2. Brief facts of the case, as per the pleadings made in the writ petition, reads as under:

3. It is evident that the petitioner is the proprietor of M/s Amar Saw Mill, Murhu having its License No. 1 of

2004. On 14.07.2004 at about 8.25 p.m. in course of checking two truck bearing registration no. BR 14G-0645 and BR-144/4502 were intercepted by the forest guards and in course of verification it was found that both the trucks were loaded with logs of wood in excess of permitted limit of Permit. Accordingly, both the trucks were seized and criminal case was instituted being Forest Case No. 34 of 2004 before the Court of Chief Judicial Magistrate, Ranchi. Besides, one Confiscation Case No. 25 of 2004 was also initiated.

4. The competent authority of the forest department issued notice upon the writ petitioner as to why the penal action be not taken in the light of provision as contained under section 7(5)(C) of the Bihar Saw Mill (Regulation) Act, 1990 [hereinafter referred to as 'Act, 1990']. Further, vide order dated 19.07.2004, the respondent-authority directed for inspection of Saw Mill Store of the petitioner, which was carried out, however, it is the case of the petitioner that such inspection was made in his absence. Accordingly, on the basis of such inspection report order dated 19.07.2004 whereby licence No. 1 of 2004 of the petitioner was cancelled. The petitioner being aggrieved thereof preferred appeal being Appeal No. 6 of 2004, which was allowed vide order dated 25.07.2005 by remitting the

matter back to the respondent no. 3 to consider the matter afresh by affording opportunity to the petitioner.

5. Accordingly, the matter was revived and the writ petitioner appeared before the original authority and after hearing the petitioner vide order dated 07.11.2008, the respondent no. 3 held that the petitioner is not entitled for any relief and order dated 19.07.2004 is just and proper and accordingly the proceeding was dropped.

6. Against the order passed by the original authority, the petitioner approached before the appellant authority which was also dismissed vide order dated 06.05.2010 in Appeal Case No. 6 of 2004, against which, the instant petition has been filed.

7. Mr. Ajit Kumar, learned counsel for the petitioner has submitted that for the alleged illegality two proceedings were initiated i.e., one under the penal offence by instituting a criminal case being Forest Case No. 34 of 2004 before the learned Chief Judicial Magistrate and another for confiscation.

8. Further, it is submitted that vide order dated 19.07.2004, the respondent-authority directed for inspection of Saw Mill Store of the petitioner, which was carried out but such inspection was made in his absence. Therefore, the submission has been made that the order impugned is highly unwarranted since the same has been

passed without taking into consideration the fact that the criminal prosecution was pending on the date when the order was passed by the confiscating authority for confiscation, save and except this point no other point has been raised on behalf of petitioner.

9. While on the other hand, learned counsel for the respondent-State has submitted that there is no nexus of pendency of criminal prosecution so far it relates to the confiscation proceeding since both the proceedings are on two different parameters and are to proceed for different consequences. Learned counsel for the respondent-State on the aforesaid premise has submitted that merely because the criminal prosecution was pending it cannot be said that the authority was having no jurisdiction to initiate the confiscation proceeding.

10. This Court, having heard learned counsel for the parties and on appreciation of arguments advanced by learned counsel for the parties, is of the view that the issue which requires consideration based upon the argument advanced by the parties is that the criminal prosecution since was pending on the date of confiscation proceeding the same ought to have waited for the outcome of the criminal case.

11. This Court, before answering the said issue, deems it fit and proper to refer herein the statutory provision of

the Bihar Saw Mills (Regulation) Act, 1990. The preamble of the Act, 1990 speaks that it is an Act to make provision for regulating in the public interest the establishment and operation of Saw Mills and Saw Pits and trade of sawing for the protection and conservation of forest and the environment. Under the said Act, the license is to be granted as per provision as contained under Section 7, which deals with grant, renewal, revocation or suspension of license. Section 7 of the Act, 1990 provides various provisions for the purpose of making application for grant of licence, its renewal and condition under which it will be revoked and suspended. For ready reference, the Section 7 of the Act, 1990 is quoted as under:

> *"7. Grant, renewal, revocation or suspension of licence.- (1) An application for licence under Section 5 shall be in such form and shall be accompanied by such application fee and such security deposit for due observance of the conditions of the licence, as may be prescribed.*
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> *(2) On receipt of the application under sub-section (1), the licensing officer may after making such enquiry, as it may deem fit:-*
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> *(i) grant the licence; or*
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> *(ii) by order in writing for reason in brief to be stated therein, refuse to grant the licence:*
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> *Provided that no order refusing to grant the licence shall be passed unless the applicant has been given a reasonable opportunity of being heard.*
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> *(3) A licence granted under sub-section (2) shall be subject, to the provisions of this Act and to such conditions as may be prescribed.*

(4) The provisions of this section shall apply to renewal of licence as they apply to grant of licence or refusal to grant a licence.

(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.

(6) A copy of every order issued under sub-section (5) shall be given to the licensee."

12. It appears form the provision of Section 5(C) of the Act, 1990 wherein it has been provided that 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.

13. It is thus evident that the power of revocation or suspension of the license is vested upon the competent authority that is to be taken after providing an opportunity of showing cause to the concerned licensee.

14. This Court, after going through the Act, 1990 is of the view that it is self-contained Act/Code wherein all the process/provision has been provided to regulate in the public interest, the establishment or operations of saw mills and saw pits and trade of sawing for the protection and conservation of forest and the environment.

15. Herein in the given facts of the case admitted position is that the vehicle in question was intercepted by forest guards wherein the logs of wood was found over the vehicle but when demanded the valid documents of the logs of wood was not produced by the petitioner and hence, both the penal action was decided to be taken; one by instituting a case before the Chief Judicial Magistrate and another confiscation proceeding.

16. The ground which has been taken that so long as the criminal case is pending it was not available for the authority concerned under the Act, 1990 to initiate the

confiscation proceeding, but we are not impressed with such argument for the reason that the prosecution for inflicting punishment under the penal offences as prescribed under the Indian Forest (Bihar Amendment Act, 1989) Act is altogether different for the very object of the Forest Act will be taken into consideration which has been enacted in order to achieve the object and intent for the protection and conservation of the forest or environment under the Indian Forest Act, 1927. The provision has been made for initiating penal offences, as would be evident from Section 52 onwards. It is thus evident that since the logs of wood have been found without valid challans/permit and as such the panel offence has been decided to be taken.

17. The Bihar Saw Mills Act, 1990 has been enacted for the same purpose i.e., to regulate the operation of saw mills and to protect and conserve the forest and environment. Both the Act i.e., the Forest Act and Act of 1990 are on two different parameters since on the one hand the Indian Forest Act deals with provisions to deal with measures to protect and conserve the forest and forest produce while on the other hand Bihar Saw Mills, 1990 is for the purpose of regulating and operating of the saw mills.

18. The prosecution has been started under the provision of Forest Act for the purpose of inflicting punishment upon the proprietor of the alleged Saw Mill if found to be guilty in illegal transportation of the forest produce. While on the other hand under the Bihar Saw Mills Act, 1990 the authority have been conferred with the power to deal with licenses and if it is found that the conduct of the licensee is contrary to the terms and conditions of the license, then it may be cancelled. Exactly the case herein, since, the writ petitioner has been found to be in illegal transpiration of logs of wood without valid challans/permit.

19. The law is already settled as would be evident from the judgment rendered by Hon'ble Apex Court in the case of ***State of Madhya Pradesh v. Uday Singh*** reported in ***(2020) 12 SCC 733*** wherein similar issue has been dealt with, for ready reference, the relevant paragraph are being referred hereunder as:-

> "**21.3.** Consequently, the mere fact that there was an acquittal in a criminal trial before a Magistrate due to a paucity of evidence would not necessarily result in nullifying the order of confiscation passed by an authorised officer based on a satisfaction that a forest offence had been committed.
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> **24.** ... ... Relying on the earlier decisions of this Court including *Divl. Forest Officer* v. *G.V. Sudhakar Rao*, (1985) 4 SCC 573, N.V. Ramana, J. speaking for the two-Judge Bench held :
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> "*23.* Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding

> is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle."
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> **26.** In *Kailash Chand* v. *State of M.P.* [1994 SCC OnLine MP 74], a Division Bench of the Madhya Pradesh High Court considered a challenge to the constitutional validity of the State Amendments to the Forest Act through M.P. Act 25 of 1983. Noticing that a criminal prosecution and a proceeding for confiscation are distinct, each with its own purpose and object, the High Court held :
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> "*20.* ... **Criminal prosecution is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object**. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence. The object of the prosecution is to punish the offender."

20. This Court after applying the said principle herein which is *para materia* to the confiscation proceeding as available under the Indian Forest Act wherein also apart from the criminal prosecution the power of dealing with the lisecne is also vested as would appear from the provision of Section 52 (5) of the Indian Forest Act.

21. This Court, on consideration of the aforesaid principle and applying the same to the facts of the given case, is of the view that the merely because the criminal case is pending the authority concerned cannot be

restrained from exercising the power for confiscation of logs of wood and cancellation of license.

22. This Court after having discussed the legal position coming back to the order passed by the authorized officers wherefrom this Court has found that the thoughtful consideration has been given by the concerned authority regarding the wood having been found over the vehicle but when asked no valid document in support thereof was produced. The authorities have found the following irregularities:

(I).On Inspection of the aforesaid saw mill, it was found that there was illegal storage of 24.5171 cubicmeter wood.

(II).The woods have been found to loaded in truck bearing registration no. BR 14G-0645 and BR-144/4502 in excess to the permit.

(III).On inspection of the stock register it was found by the inspecting team that manipulation has been done.

23. The authority based upon the same has passed order of revocation of license. The said order has been challenged in appeal but the appellate authority has also declined to interfere with the same. As discussed above, the power of revocation is already available, as would be evident from the provision of Section 7(5)(c) of the Act, 1990 wherein the competent authority has power to revoke or suspend the license.

24. The writ petition has been filed for quashing order dated 06.05.2010 passed in Appeal Case No. 6 of 2004 as also order dated 07.11.2008 passed in Licence Case No. 4 of 2005, by issuance of writ of certiorari.

25. The law is well settled so far as parameter which is to be followed by the Court while issuing writ of certiorari, as has been held by Hon'ble Apex Court in the case of ***Syed Yakoob Vrs. K.S. Radhakrishnan & Ors***, [***A.I.R. 1964 477 Supreme Court]***, wherein at paragraph no. 7 their Lordships have been pleased to held as under:-

> *"7.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ,*

but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point 11 and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

In another judgment of Hon'ble Apex Court in the Case of ***Sawarn Singh & Anr. Vrs. State of Punjab & Ors*** reported in ***(1976) 2 SCC 868*** their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

*"**12.** Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the*

exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate court. As was pointed out by this Court in Syed Yakoob case,

"this limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be."

"13.In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

In another judgment rendered by Hon'ble Apex Court in the case of ***Pepsico India Holding Private Limited Vrs. Krishna Kant Pandey*** reported in ***(2015) 4 SCC 270*** their Lordships while discussing the scope of Article 226 and 227 of the Constitution of India in the matter of interference with the finding of the tribunal has been pleased to hold by placing reliance upon the judgment rendered in the case of ***Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram*** reported in ***(1986) 4 SCC 447*** at paragraph 14 has held as under:-

*"**14.**While discussing the power of the High Court under Articles 226 and 227 of the Constitution interfering with the facts recorded by the*

courts or the tribunal, this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] , held as under:

"17. In case of finding of facts, the Court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858 : AIR 1975 SC 1297] where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at AIR p. 1301 of the Report as follows:

'7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath [AIR 1954 SC 215] (AIR p. 217, para 14) that the

power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors".

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora v. Commr. of Hills Division [AIR 1958 SC 398] and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case: (AIR p. 413, para 30)

"30. … It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

It is evident from the ratio laid down by the Hon'ble Apex court in the judgments as referred hereinabove that the scope of High Court sitting under Article 226 of the Constitution of India in exercise of power of judicial review on the finding of the Tribunal is very limited.

26. This Court, on consideration of the aforesaid principle and coming back to the factual aspect of this case, is of the view that it is not the case of such nature where any error on the face of order is available based upon the discussion made hereinabove rather the order is within the four corner of the statutory provision, as per the provision of Section 7(5)(c) of the Act, 1990.

27. Therefore, this Court is of the view that the impugned orders require no interference by this Court.

28. Accordingly, the writ petition stands dismissed.

(Sujit Narayan Prasad, J.)

Alankar/-

A.F.R