

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.50 of 2014

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Md. Alamgir Son of Md. Tahir Prop. Azad Saw Mills, Resident of Nunupatti,
Police Station + District - Supaul

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Forest and Environment,
Government of Bihar, Patna
2. The Principal Secretary, Forest and Environment, Government of Bihar, Patna
3. The Principal Chief Conservator of Forest, Patna
4. The Conservator of Forest, Purnia Circle, Purnia
5. The Divisional Forest Officer, Saharsa Circle, Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh, Advocate
Mr. Ranvijay Narain Singh, Advocate
For the Respondent-State : Mr. Siddharth Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-02-2016

Heard Mr. Rajesh Kumar Singh, learned counsel appearing
for the petitioner and Mr. Siddharth Prasad A.C. to A.A.G.-4, for the
State.

The petitioner has prayed for issuance of a writ in the
nature of certiorari for quashing the order bearing Memo No. 1497
dated 23.8.2012 passed by the Licensing Authority-cum-Divisional
Forest Officer, Forest Division, Saharsa as contained in Annexure-2
whereby the prayer for renewal made by the petitioner of his Saw
Mills License bearing No. 63 of 1994 issued under the provisions of
Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as
'the Act') and 'the Rules' framed thereunder has been rejected. The



petitioner has also prayed for quashing the order bearing Memo No. 1879 dated 29.7.2013 passed by the Competent Authority-cum-Conservator of Forests, Purnia Division, Purnia in Appeal Case No.05-S of 2013 whereby the appeal has been dismissed.

From the nature of relief so prayed by the petitioner the fact itself is eloquent that the petitioner was a licensee under 'the Act' and 'the Rules' framed thereunder, bearing License No.63 of 1994 issued on 19.3.1994. The licence of the petitioner was cancelled vide order passed on 25.11.2004. The challenge thereto also met with no success before the statutory authority forcing the petitioner to move to this Court in CWJC No. 6870 of 2008 and a coordinate Bench of this Court in consideration of the issue raised by the petitioner disposed of the writ petition in the following terms:

“It appears that the licenses of the petitioners have been cancelled on the ground of not filing renewal application in time and not depositing the required penalty. There is no allegation that the petitioners have indulged in any illegal activities. In this view of the matter, without expressing any opinion on the merit of the case, I would give one more opportunity to the petitioners to place their case before the respecting licensing authority. In case the renewal of license would in no manner exceed the limit prescribed by the Central Empowered Committee and the petitioners are willing to pay the penalty, the

licensing authority would consider their application for renewal of their respective licenses within three months from the date of its filing.

With the aforesaid observations and directions, these writ applications stands disposed of.”

A plain reading of the directions issued by this Court present at Annexure-1 would show that except for the charge of non-deposit of licence fee within time, there is no other allegation against the petitioner either of violation of the condition of licence or of any offence punishable under ‘the Act’.

This Court thus taking into consideration the reasons leading to the cancellation of licence directed the licensing authority under ‘the Act’ to consider the grievance of the petitioner and dispose of the same with the only rider that the acceptance of the prayer of the petitioner should not lead to an increase in the statutory number of saw mills fixed for the district.

It would be necessary to mention here that the entire issue regarding the permissible number of saw mills operating in each State is pending consideration before the Hon’ble Supreme Court in a writ petition arising from W.P.(C)No. 202 of 1995 and analogous cases and it is in the light of the observations and directions passed in the pending proceedings by the Supreme Court that a circular was issued by the Department of Forest,



Government of Bihar, a copy of which has been placed at Annexure-6 to the supplementary affidavit filed on behalf of the petitioner which is dated 9.9.2011 and which contains an advisory issued by the Forest department to all concerned that until the finalization of the seniority list by the Supreme Court the licenced saw mills are not to be closed.

This advisory of the Department of Forest issued under the authority of the Conservator of Forest, Purnia Division present at Annexure-6 is of much relevance for the issue at hand for it was in force and in operation when the writ petition filed by the petitioner bearing CWJC No. 6870 of 2008 was disposed of on 12.3.2012 with a remand of the matter to the authorities to consider the grievance of the petitioner.

Unfortunately, the authorities while rejecting the claim advanced by the petitioner by the orders impugned placed at Annexures-2 and 4 respectively have completely ignored this advisory which is resting on the command of the Supreme Court and have rejected the claim of the petitioner simply on grounds that his renewal of licence would increase the number of saw mills in the district.

Upon this matter being taken up for consideration and upon the attention being drawn by Mr. Singh that learned counsel for the



State was asked to seek a response from the department on its advisory present at Annexure-6 and whether that would enure to the benefit of the petitioner but it is rather regretful to note that the Deputy Conservator of Forest while expressing his opinion on the advisory issued by his superior, has read in between the lines to comment that it is only applicable to the licensees whose licence had been renewed and not those whose license had been cancelled. The stand of the Deputy conservator of Forest to wrest the right from the petitioner flowing from Annexure-6 for consideration of his case in the light of the order of this Court present at Annexure-1 even if not contemptuous is admittedly arbitrary. The very fact that the matter is yet pending before the Supreme Court and the number of saw mills in a district is yet to be finalized that the Department of Forest, Government of Bihar has rightly advised its district authorities to permit the Licensed Saw Mills to continue. Considering that the petitioner admittedly is a licensee and his license has been cancelled only on grounds of non-deposit of the licence fee timely and not on grounds of statutory violations, the moment the matter was remanded by this Court for re-consideration of his claim subject to the only exception that the number of saw mills fixed for a district should not increase, in my opinion in view of Annexure-6, the respondents had no jurisdiction to reject the prayer of the petitioner for renewal except

that the renewal fee would accompany a penalty for late deposit.

In fact in my opinion the stand taken by the respondent before this Court was mis-leading, for there could not have been any restriction in the Saw Mills in view of the advisory issued on 9.9.2011 (Annexure-6) and thus the claim could not have been rejected on any account.

For the reasons aforementioned the order dated 23.8.2012 passed by the Licensing Authority cum Divisional Forest Officer, Forest Division, Saharsa as contained in Annexure-2 together with the appellate order dated 29.7.2013 passed by the Competent Authority cum Conservator of Forest, Purnea Division, Purnea impugned at Annexure-4 cannot be upheld and are accordingly set aside.

This Court in the circumstances discussed would direct the licensing authority to issue renewal order of the licence of the petitioner forthwith upon deposit of licence fee and late fee by the petitioner and which renewal would be subject to the final outcome of the proceedings before the Supreme Court.

The writ petition is allowed.

(Jyoti Saran, J)

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