

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13333 of 2017

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M/s Sah Saw Mill, through Mohan Prasad, Son of Late Ram Ayodhya Prasad, Resident of Village- Parsauni Kapoor, P.S. Patahi, District- East Champaran, at present resident of Village- Sikandarpur, P.S.- Sangrampur, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Forest Department, Government of Bihar, Patna.
2. The Chief Conservator, Forest Department, Patna.
3. The Regional Chief Conservator, Forest Department, Patna.
4. The Conservator of Forest, Forest Department, Circle Siwan.
5. The District Forest Officer, Motihari, Forest Division, East Champaran.
6. The Range Officer, Forest Department, Areraj, East Champaran.
7. The District Magistrate, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate

Mr. Shakil Ahmad Khan, Advocate

For the Respondent/s : Mr. Niraj Kumar Sinha, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-12-2017

Heard Mr. Alok Kumar Agrawal, learned counsel appearing for the petitioner and Mr. Niraj Kumar Sinha, learned Assisting Counsel to Principal Additional Advocate General No.2 for the State.

The petitioner is aggrieved by the order dated 6.7.2017 of the Conservator of Forest, Circle- Siwan passed in Appeal No.07 of 2014, whereby he while confirming the order bearing Memo No.307 dated 1.3.2014 of the Licensing Authority cum Divisional Forest Officer, Motihari, has dismissed the appeal. Copies of the orders passed by the Appellate Authority and the Licensing Authority are impugned at Annexures 1 and 1/A respectively to the writ petition.

The licence for the saw mill was held by the father of the petitioner late Ram Ayodhya Prasad under the provisions of the Saw



Mills Regulation Act, 1990 (hereinafter referred to as 'the Act') and 'the Rules' framed thereunder bearing No.368 of 1999. As per the admission of the petitioner, since the father of the petitioner was not keeping well that he requested the Licensing Authority to include the name of his Manager, namely, Abdul Rahman Ansari as a party to the licence on 29.3.2004 and which prayer of the licence-holder was allowed vide order bearing Memo No.435 dated 29.3.2006 to include the name of Abdul Rahman Ansari. The father of the petitioner expired soon thereafter on 5.6.2006. The licence of the saw mill, however, was renewed until the year 2013 as manifest from Annexure-3 but thereafter the renewal has been rejected by the order impugned passed by the Licensing Authority cum Divisional Forest Officer, Motihari bearing Memo No.307 dated 1.3.2014, inter alia, on grounds that it amounted to transfer of licence which is not permissible under section 7(5)(a) of 'the Act' and since the said partner Abdul Rahman Ansari was not the original licensee nor his heir hence the licence was cancelled.

The son of the licence-holder who is the petitioner herein filed statutory appeal before the Conservator of Forest giving rise to Appeal No.07 of 2014 and alongside also filed application for substitution because the Licensing Authority cum Divisional Forest Officer, Motihari had cancelled the licence on two grounds i.e. the partner inducted namely Abdul Rahman Ansari was neither the original licence holder nor heir of the licence holder. The substitution application is placed at Annexure 14 series to the writ petition and is dated 19.12.2014 and obviously was in consequence of the cancellation order. The Appellate Authority, i.e. the Conservator of Forest while considering the appeal though has taken



note of this fact but has yet proceeded to confirm the order of the Licensing Authority.

In my opinion, none of the two orders are unsustainable in law for neither the licence could have been cancelled on grounds that Abdul Rahman Ansari was not the original licence holder once he has been inducted as a partner in the licence vide order bearing Memo No.435 dated 29.3.2006 as admitted by the Licensing Authority cum Divisional Forest Officer in his order dated 1.3.2014 at paragraph 3 nor the application of the petitioner for being substituted in place of his father could have been rejected when the Appellate Authority was considering the appeal because this petitioner by inheritance had stepped into the shoes of the original licence-holder.

In so far as the issue of induction of partner into the licence and his recognition is concerned, reference is made to a judgment of this Court reported in **2015 (2) PLJR 211 (M/s Champaran Timber and Allied Product vs. State of Bihar)** wherein a similar issue fell for consideration, where the licence since after induction of the partner, had been renewed, as in the present case, since after the death of the original licensee, until 2013 and thereafter cancelled as according to the respondents, it meant a transfer of licence which is prohibited under section 7(5)(a) of 'the Act'. This Court taking note of similar circumstances where the licence had been cancelled on grounds of transfer of ownership, held the cancellation unsustainable because it was the respondents themselves, who allowed the induction in the partnership of the licence and after having permitted an induction and renewed the licence thereafter, there cannot be a turn around to hold the induction



impermissible.

In my opinion, the reasons so discussed in the judgment rendered in the case of **Champaran Timber and Allied Product** (supra) applies with full force to the issue in contest herein and neither the cancellation is sustainable because Abdul Rahman Ansari was inducted as partner to the licence in the lifetime of the original licensee nor the application of the petitioner for his substitution in the licence on the death of his father, could have been rejected, even if belated.

For the reasons discussed above, the order dated 6.7.2017 passed by the Conservator of Forest, Circle- Siwan in Appeal No.07 of 2014 confirming the order dated 1.3.2014 of the Licensing Authority – cum- Divisional Forest Officer, Motihari impugned at Annexures 1 and 1/A are quashed and set aside. The matter is remitted to the Licensing Authority –cum- Divisional Forest Officer, Motihari for consideration of the prayer of the petitioner for renewal of the licence together with continued induction of said Abdul Rahman Ansari and its disposal in accordance with law, which decision be taken within a period of six weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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