

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9484 of 2015

=====

M/s Upendra Saw Mill, Bajitpur Manigachi, P.S. Manigachi, District- Darbhanga, a proprietorship firm through its proprietor Phulo Devi wife of Late Upendra Thakur, resident of village- Bajitpur, P.S. Manigachi, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Environment & Forest Department, Government of Bihar, Patna.
2. The Principal Chief Conservator of Forest, Bihar, 4th Floor, Technology Bhawan, Bailey Road, Patna.
3. The Licensing Officer-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Adv.

For the Respondent/s : Mr. Ashish Kumar Lal, AC to GA-5

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-03-2017

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the letter no. 2329 dated 31.12.2014 by which the licensing Authority cum Divisional Forest Officer, Mithila Forest Division, Darbhanga rejected the application for renewal of the Saw Mill license.

The short fact of this case is that Phulo Devi who is proprietor of the Saw Mill has filed an application for renewal after the death of her husband, namely, Upendra Thakur. At the initial stage, Upendra Saw Mill was running on Khata No.80 and Khesra No.



4351. The partition took place in the family, the plot of land has been allotted in the share of Ram Sevak Thakur, whereupon, he has claimed that the license should be transferred in his name. As the license was in the name of Upendra Thakur, the application of Ram Sevak Thakur was not accepted, led to filing of the writ application vide CWJC No. 13041 of 2012. This Court remanded the matter back to the Licensing Authority vide order dated 31.7.2012 and directed Ram Sevak Thakur (petitioner) to approach the competent authority within a period of four weeks and the competent authority was directed to dispose of the matter within a period of two months from the date of filing of the application.

The present petitioner appeared before the Licensing Authority cum Divisional Forest Officer, Mithila Forest Division, Darbhanga claimed that the License Holder of the Saw Mill was her husband and the Saw Mill is being run in another Khata No. 284, Khesra No. 4833. The Authority considered the submission of both the parties and arrived to a finding that without proper permission, Upendra Thakur has shifted the Saw Mill on different place as well as Santosh Kumar Sharma, son of Late Ramsevak Thakur was running the Saw Mill illegally without any license and rejected the application of Santosh Kumar Sharma. The Licensing Authority also found that though the petitioner has shifted the Saw Mill at different plot without permission



has remanded back the matter when a plea has been taken that running a Saw Mill is the only source of livelihood. After remand, the Licensing Authority has renewed the license for the year 2013-14. The petitioner filed a fresh application for further renewal which has been rejected on 31.12.2014 on the ground that the name of the Saw Mill is not standing in the merit list. This issue is no longer res integra, as has been decided in Letters Patent Appeal No. 1216 of 2015, there the court in the Division Bench held that if the Saw Mill is running under a license, there is no need that his/her name should stand in the merit list. It is relevant to quote relevant paragraphs of the aforesaid order which reads as follows:-

"It is, no doubt, true that the High Court would be slow to entertain the writ petition when the petitioner has an effective alternative remedy by way of statutory appeal. However, there are certain well-recognized exceptions to that. One of them is where order is passed in violation of principles of natural justice; and the other is where the order is passed wholly without jurisdiction. Apart from these two, there are certain other exceptions also.

In the instant case, it is not in dispute that the saw mills were established more than a decade ago, after obtaining the licences from the competent authority. In case there is any violation on their part, the licences can be cancelled by initiating the proceedings. Further, if the petitioners did not qualify for renewal, the reasons must be stated.

One strange reason assigned in all the orders refusing renewal is that the names of the saw mills of the



appellants do not figure in the list of selected saw mills. The relevant law does not provide for preparation of such a select list. If an exercise of that nature was undertaken, it was fundamental that all the functional saw mills were given opportunity to put forward their cases. There cannot be any unilateral preparation of select list and denial of licence on that basis.

We, therefore, allow the Appeal. Consequently, the writ petition is allowed and the individual orders dated 8.4.2015, served to the petitioners (appellants herein) are set aside. The 5th respondent, i.e. the Licensing Authority, shall give an opportunity to the petitioners to represent their cases and shall also indicate the basis on which the list of selected saw mills was prepared. In case the petitioners were not found to have violated any provisions of law, they shall be granted renewal without any delay. Till such time, the appellants shall be entitled to run the mills, duly following the relevant provisions of law and conditions of licence."

In that view of the matter, the ground which has been taken in the impugned order is not sustainable in law as it is no longer required that the name of the petitioner should stand in the merit list prepared by the authority and, accordingly, the impugned letter no. 2329 dated 31.12.2014 is quashed. The Licensing Authority will consider her application of renewal of license taking into account that the present Saw Mill is only source of livelihood and her husband was a license holder of the Saw Mill.

An I.A. application filed by Santosh Kumar Sharma, I.A. No. 1550 of 2016, this Court does not find any purpose to hear him in



the present case as this Court does not find that he has any clash or interest in the present petition on the ground that the petitioner is running the Saw Mill on the different plot and is claiming the license of her husband. Santosh Kumar Sharma, if so desires, may take legal course as is permissible in law.

This application is, accordingly, allowed to the aforesaid extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2017
Transmission Date	

