

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13573 of 2014

=====

1. M/s New Durga Saw Mills through its Authorised Representative and Power of Attorney Holder, Gopal Sharma Son of Late Mahavir Sharma Resident of village + Post Bakhari, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna
2. The Principal Secretary, Department of Environment and Forest Bihar, Patna
3. The Principal Chief Conservator of Forest, Bihar, Patna
4. The Conservator of Forest, Muzaffarpur
5. The Saw Mill Selection Committee through its Member Secretary cum Divisional Forest Officer, Begusarai
6. The Commissioner cum Chairman Saw Mill Selection Committee, Munger
7. The Divisional Forest Officer, Begusarai
8. The Range Officer, Begusarai

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Aditya Prakash Sahay, Adv.

For the Respondent/s : Mr. Dinesh Maharaj, A.C. to AAG 8

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-12-2017

Heard Mr. Aditya Prakash Sahay learned counsel for the petitioner and Mr. Dinesh Maharaj, A.C. to AAG 11 for the State.

The petitioner is aggrieved by the order bearing Memo No. 945 dated 26.04.2012 of the Divisional Forest Officer, Begusarai, Forest Division, Begusarai whereby he has been informed that his saw mill has not been included in the seniority list by the Committee chaired by the Divisional Commissioner on grounds that his licence granted under the Saw Mills (Regulation) Act, 1990 read with Bihar Saw Mills (Regulation) Rules, 1993 stood cancelled. The same ground has



also been assigned for non renewal of licence of the petitioner.

Mr. Sahay learned counsel for the petitioner has taken this Court through the sequence of events to submit that the licence of the petitioner was granted for the saw mill in the year, 1996 bearing licence No. 80 of 1996 as confirmed from Annexure-1 and which though was cancelled under the order of the Licensing authority cum Divisional Forest Officer on 29.11.2001 at Annexure-3 but the cancellation was ex parte and without opportunity of hearing. He submits that an appeal was preferred by the petitioner, which along with several others, were allowed on the general directions issued by the appellate authority which resulted in the renewal of the licence of the petitioner for the period ending on 31.12.2002 by the Licensing authority, a copy of which is at Annexure-5. It is submitted that it is following such development that the petitioner along with several others chose to withdraw the appeal as confirmed from Annexure- 6 in which the name of the petitioner appears at serial N.9. It is submitted that despite the position that the licence of the petitioner continued to be in force yet in absence of proper instructions with the Committee headed by the Divisional Commissioner, in the matter of preparation of seniority of saw mills, the petitioner was kept out of consideration on grounds that his licence had stood cancelled, even though the same had been restored subsequently and renewed for the



period ending 2002 and thereafter as confirmed from Annmexure-5. It is stated that on a misconception and incorrect impression gathered by the Committee that the petitioner was not included in the seniority list and such decision has been communicated by the impugned letter No. 945 dated 26.4.2012 of the Divisional Forest Officer impugned at Annexure-7.

He submits that feeling aggrieved he filed a statutory appeal before the Conservator of Forest cum Appellate Authority bearing Appeal No. 6 of 2012 and the opinion of the appellate authority in the concluding portion at running page 31 onwards of the order enclosed at Annexure 8, is sufficient to quash the decision of the selection committee.

While Mr. Maharaj learned counsel appearing for the State has chosen to support the impugned action but it is undisputed that the order of the appellate authority has attained finality and the department has not chosen to question the same before any superior authority.

I have heard learned counsel for the parties and I have perused the records.

The facts are already noted hereinabove and requires no reiteration. Annexure-7 confirms that the only ground on which the petitioner did not make it to the seniority list is, because the selection



committee chaired by the Divisional Commissioner was of the impression that the saw mill licence of the petitioner stood cancelled and which impression was incorrect. Though the impression was carried out by the Committee on the basis of the order dated 29.11.2001 at Annexure-3 but it was not correct because on the appeal filed by the petitioner against the cancellation order that directions were issued and has resulted in the renewal of the licence of the petitioner on 29.01.2002 for the period ending on 31.12.2002 at Annexure-5 to the writ petition, meaning thereby the licence of the petitioner was restored on 29.01.2002. It is wholly on account of lack of intra departmental communication which has resulted in the non-inclusion of the petitioner's saw mill in the seniority list. The reliance by Mr. Sahay to the concluding portion to the order of the appellate authority is sufficient to allow the writ petition and which runs as follows :

“.....Accordingly, the revocation of the licence made in the year 2001 ceased to be in force once it was renewed by the licensing officer in the year 2002 on the observation of the competent authority. Section 12(1) of the Act is a provision for redressal of grievance of a person who is aggrieved by the order of the licensing officer. If such grievance is addressed in the meanwhile, there remains no cause for invoking this provision any further.

Hence, as far as the reason for refusal of application, detailed in the impugned order, on the basis of revocation made in the year 2001 is concerned, it is not found to be valid in eye of this court.

As far as the refusal of application on the basis of non-



selection of the mill in the seniority list by the committee constituted for this purpose is concerned, it is brought to notice of the appellant that the Apex Court has made provision for redressal of grievance of such affected parties before an appropriate forum. The appellant is at liberty to represent before such forum as per law. Till the time such representation, if made, is under consideration of the appropriate forum, the order of the licensing officer shall remain in force unless otherwise directed by such forum.”

The appellate authority has upheld the contention of the petitioner regarding the restoration of licence on 2002 by the competent authority and to that effect has held that the impugned order relying on a revocation of 2001 was not valid because the licence was restored in 2002. Although the appellate authority after allowing the appeal on this ground ought to have remitted the matter to the Selection Committee for consideration of the case of the petitioner for inclusion in the seniority list because the only objection to the petitioner's inclusion, inter alia on grounds of cancellation of his licence, did not exist any more but instead, he has advised the petitioner to seek remedy before the appropriate forum for inclusion in seniority list. In my opinion this would not be necessary because once the foundation for non- inclusion of the petitioner's saw mill in the seniority list stands removed, his case requires a re-consideration by the Selection Committee chaired by the Divisional Commissioner, Munger Division.



In the circumstances discussed the matter is remitted to the Selection Committee chaired by the Divisional Commissioner, Munger or authority concerned, presently in seisen of the matter of preparation of seniority list in terms of the order passed by the Hon’ble Supreme Court for consideration of the case of the petitioner’s saw mill for inclusion in the seniority list and for passing appropriate orders in accordance with law within a period of six weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2017
Transmission Date	NA

