IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11764 of 2013

==========

1. Sharbila Devi wife of Vijay Sharma Resident of Village - Chhatarbigha, P.S. Bind, P.O. Asthawan, Distt. Nalanda

.... Petitioner/s

Versus

1. The State of Bihar represented through its Secretary, Department of Forest and Environment, Govt. of Bihar
2. Conservator of Forest Office, Nehru Nagar, Patna
3. The District Magistrate, Nalanda
4. Conservator of Forest, Nalanda, Extension Forest Division, Biharsharif, District - Nalanda
5. The Divisional Forest Officer, Nalanda, Extension Forest Division, Biharsharif, P.O. & P.S. Biharsharif, P.O. & P.S. Biharsharif, Distt. Nalanda
6. Licencing Authority cum Divisional Forest Officer, Nalanda, Extension Forest Division, Biharsharif
7. The District Forest Officer, Nalanda at Biharsharif

.... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Rajesh Kumar Verma, Adv.
For the Respondent/s : Mr. Rakesh Ranjan, A.C. to G.P.21

==========

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-10-2017

Heard Mr. Rajesh Kumar Verma learned counsel for the petitioner and Mr. Rakesh Ranjan, A.C. to G.P.21 for the State.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission.

The petitioner is aggrieved by the order bearing No.49 dated 11.01.2002 of the respondent-Divisional Forest Officer, Nalanda whereby the Saw Mill Licence of the petitioner granted under the provisions of the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter

WEB COPY

referred to as 'the Act') and the rules framed thereunder has been cancelled for alleged violation of the condition of licence, a copy of which order is impugned at Annexure-2 to the writ petition. The petitioner also questions the appellate order bearing Memo No.912 dated 10.05.2013 of the Appropriate Authority-cum-Conservator of Forest, Patna Circle, Patna whereby the cancellation order has been confirmed when the Appeal No.6 of 2012 of the petitioner has been rejected. A copy of the appellate order is impugned at Annexure-5.

The writ petition was filed by the licensee who has since deceased during the pendency of the writ petition and has been substituted by his widow who has sought leave to pursue the matter which prayer was allowed by this Court vide order passed on 14.08.2015.

The cancellation order(s) were preceded by a notice dated 03.07.2001, a copy of which is placed at Annexure-1 and which inter alia charges the licensee of three violations namely:

(a) No renewal application was filed by the licensee from 1998 until 2001 nor the renewal fee was deposited.

(b) The monthly and quarterly returns in prescribed form was not submitted since 1996.

(c) The transportation pass has also not been submitted by the

WEB COPY

petitioner.

The husband of the petitioner responded to the notice as manifest from the statement made at paragraph 10 of the counter affidavit in which the respondent do admit that the husband of the petitioner intimated that the saw mill itself was closed since 1997. Since the husband of the petitioner was directed to file the necessary returns but he failed to comply with the directions that the order of cancellation was passed on 11.01.2002 impugned at Annexure-2 and which has been affirmed vide the appellate order impugned at Annexure-5

The husband of the petitioner late Vijay Sharma who was the licensee had earlier come before this Court in C.W.J.C.No.19178 of 2012 and a coordinate bench taking note of the fact that there was an appellate remedy available to the licensee, disposed of the writ petition vide judgment and order dated 11.10.2012 granting liberty to exhaust appellate remedy. It is thereafter that the appeal was filed and which has been rejected by the order dated 30.4.2013 bearing Memo No.912 dated 10.5.2013 impugned at Annexure-5.

Mr. Verma learned counsel for the petitioner has relied upon a Division Bench judgment of this Court since reported in **2017(1) PLJR 764** (**Shyamal Kishore Singh Vs. the State of Bihar & Ors.**)

WEB COPY

to submit that the Division Bench on examination of the statutory provisions underlying Sections 6, 7, 14 and 19 of 'the Act' has held that a default in seeking a renewal and/or failure to deposit a renewal fee within the time fixed, is a technical violation and which though attracts a penalty under Section 14 of 'the Act' but is compoundable under Section 19 of 'the Act'. He submits in so far as non filing of the return is concerned, since the unit itself was not operational since 1997 which information was given by the late husband of the petitioner, there was no occasion for either filing of the returns or to deposit the transportation pass because the unit itself was closed. He further endeavours to submit that although deposits was made for renewal but it is on this pretext that it was not granted. He submits that the husband of the petitioner has now deceased but the petitioner as a widow of the licensee is entitled to seek renewal of the licence in her name as a legal heir of the licensee under Section 7 of 'the Act'. He further submits that the petitioner is also agreeable to deposit of compoundable fee for such renewal as would be deemed fit and proper by the authorities concerned.

Mr. Ranjay learned counsel for the State while resisting the prayer has submitted that it is on the default of the husband of the petitioner in complying with the directions which has resulted in the

WEB COPY

order(s) impugned.

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

A copy of the licence has been placed on record by the petitioner through supplementary affidavit and which manifests that the licence was granted on 20.12.1996 and was valid until 31.12.1996 subject to renewal. In other words, in so far as the period 1996 is concerned, the unit was hardly operational which is confirmed from the date of issuance of the licence which is 20.12.1996. The respondents in their counter affidavit have also admitted that the late husband of the petitioner responding to the notices issued to him did appear before the Licensing Authority and informed him that his saw mill was closed since 1997. Meaning thereby, that since after the issuance of the licence on 20.12.1996 which had a validity until 31.12.1996, the unit never became operational. In my opinion, in such circumstances where the unit was practically non functional, there was hardly any occasion for the unit to either submit monthly/quarterly returns or to deposit transport pass. Yes there has been a default by the licencee in filing of the renewal and/or deposit of renewal fee but then in view of the opinion expressed by the Division Bench at paragraphs 7 and 8 of the judgment relied upon by Mr. Verma

WEB COPY

rendered in the case of **Shyamal Kishore Singh** (supra), the claim of the petitioner would merit consideration by the Licensing Authority, which runs as under:

> "7. A perusal of the Act and Rules framed there under shows that the licensee is required to apply to the Licensing Authority for renewal of the licence at least one month before the expiry of the licence. Such application has to be accompanied with the renewal fee. Since as per the findings recorded, the appellant has not submitted any application for renewal within the time fixed, the appellant is in technical violation of the provisions of the Statute which attracts penalty in terms of the Section 14 of the Act. Such penalty which can be levied is compoundable in terms of Section 19 of the Act.
>
> 8. In view of the submission of the learned counsel for the appellant, in these circumstances, we dispose of the present Letters Patent Appeal with liberty to the appellant to apply for composition of the default in making application for renewal of the licence along with the renewal fee within one month from today. On a such application being made, if any, along with renewal fee, the competent authority shall examine as to whether such default is liable to be compounded in terms of Section 19 of the Act and, if yes, then the terms thereof. The competent authority shall pass an order within next six months."

In view of the discussion above and in view of the position settled by the Division Bench in the matter of delay in filing of renewal application or deposit of renewal fee, the order of cancellation of licence dated 11.01.2002 impugned at Annexure-2 together with the appellate order dated 30.04.2013 impugned at Annexure-5 are quashed and set aside. The petitioner being the legal

WEB COPY

heir of the licensee is fully entitled to seek a renewal in terms of the provisions underlying Section 7 of 'the Act' and accordingly she would appear before the Licensing Authority along with copy of the order together with an application seeking renewal of licence together with the required fee and which shall be accordingly considered and disposed of by the Licensing Authority in accordance with law in terms of the statutory prescriptions and in view of the order of the Division Bench passed in the in the case of **Shyamal Kishore Singh** (supra) within a period of six weeks from the date of filing of the application.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	30.10.2017
Transmission Date	NA

WEB COPY