IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22402 of 2014

==========

M/s Calcutta Plywood through its proprietor Anand Kumar Agrawal, Son of Banwari Lal Agrawal, Resident of Kadam Rasool, Bahadurganj, P.O. + P.S. + District - Kishanganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Environment & Forest, Bihar, Patna.
2. The Principal Chief Conservator of Forest, Patna.
3. The Additional Chief Conservator of Forest, Patna.
4. The Regional Chief Conservator of Forest, Patna.
5. The Conservator of Forest, Purnia Division, Purnea.
6. The Divisional Forest Officer, Araria Forest Division, Araria.
7. The Veneer Mill Selection Committee Bihar through its Secretary.
8. The Range Officer, Kishanganj.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Aditya Prakash Sahay, Advocate
For the State : Mr. Mujtabaul Haque, GP-12
Mr. Mritunjay Kumar, AC to GP-12

==========

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 05-12-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following reliefs:

> *"(A) For issuance of order/orders, direction/directions, writ/writs particularly in the nature of writ of mandamus for a direction upon the respondent authorities to include the name of*

WEB COPY

petitioner at serial no. 128 in final seniority list of Veneer Mills as admittedly all the Veneer Mills after serial no. 127 are junior to the petitioner.

(B) For issuance of order/orders, direction/directions, writ/writs particularly in the nature of writ of Certiorari for quashing of resolution dated 24.06.2013 (Annexure-13) whereby and whereunder the veneer mill selection committee has observed that there is internal dispute among its partners which cannot be resolved by this committee and as such petitioner is not fit to be included in seniority list.

(C) For issuance of order/orders, direction/directions, writ/writs, particularly in the nature of writ of Certiorari for quashing of letter no. 228 dated 08.02.2014 (Annexure-14) whereby and where-under the petitioner has been directed to close down the veneer mill with immediate effect and to appear on 28.02.2014 for hearing upon the renewal application for the year 2014 and accordingly on 28.02.2014, the petitioner appeared but till date petitioner has not been communicated any order. By this letter dated 08.02.2014, the petitioner came to know that the petitioner has not been included in fresh seniority list which is also impugned herein.

(D) For issuance of order/orders, direction/directions, writ/writs, particularly in the nature of writ of mandamus for a direction upon the respondent authorities for not disturbing the petitioner for its operation in its business of Veneer Mills.

(E) For any other relief(s) for which the petitioner is entitled for."

3. The petitioner firm was granted license no. 15 of 1994 under the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as the 'Act') in the name of Anand Kumar Agrawal for operation of the Venner Mill M/s Calcutta Plywood in Kishanganj district.

WEB COPY

4. An exercise was undertaken by the authorities in terms of the order of Hon'ble Supreme Court dated 04.9.2009 in WP (C) No. 202 of 1995 and the report dated 11.06.2008 of the Central Empowered Committee. In terms thereof, the State Government vide resolution No. 2675 dated 30.08.2010, fixed the number of Veneer Mills of the State as 177. Further, guidelines were laid by the State Government in terms of the report of the Central Empowered Committee dated 09.03.2012, the order passed by the Hon'ble Supreme Court as also of the letter of the Central Empowered Committee dated 26.07.2012, by resolution no. 2841 dated 06.09.2012, for preparation and publication of seniority list of Veneer Mills at the State level. A notice was published in the newspaper on 27th July, 2012, inviting information from the Veneer Mill owners regarding their units in a fixed format. Based on the same, a provisional seniority list of Veneer Mills of the State was prepared and published vide order no. 78 dated 09.10.2012 of the Principal Chief Conservator of Forest, Bihar. Objections were also invited. Through notice in the newspaper, the Veneer Mill owners were given opportunity to file their objections by 03.11.2012. Upon objection received against the provisional list, the date of hearing of objection was fixed and notice issued in newspaper by which all the Veneer Mill owners were asked to be present on the

WEB COPY

date of hearing with original papers. Date and place of hearing was mentioned in the notice as well as the documents which were required to be verified by the Committee constituted by the State Government.

5. Kala Nand Sharma submitted representation stating that Anand Kumar Agrawal was operating the Veneer Mill in partnership with Subhash Chandra Paul and Subrato Das. Subhash Chandra Paul and Subrato Das retired from the firm on 18.01.2000 and Kala Nand Sharma, was admitted as partner in the firm by Anand Kumar Agrawal by executing a partnership deed agreement with him. The said agreement was neither registered nor notarized. It also lead to Anand Kumar Agrawal retaining only 25% share in the firm while the remaining 75% was allotted to Kala Nand Sharma. Another agreement of partnership was executed between Subrato Das and Kala Nand Sharma on 17.06.2000, which was a notarized agreement. In the same, it was mentioned that Anand Kumar Agrawal and Subhash Chandra Paul retired from the firm from 17.06.2000 and Kala Nand Sharma was admitted as partner in the firm by Subrato Das with Anand Kumar Agrawal and Subhash Chandra Paul signing as witness on agreement. By this agreement, Subrato Das retained only 25% share in the firm and remaining 75% share was allotted to Kala Nand Sharma. Anand

WEB COPY

Kumar Agrawal informed the Divisional Forest Officer that he had taken Kala Nand Sharma as partner in the business of Veneer Mill on 18.01.2000 and request was made for adding the name of Kala Nand Sharma in the license issued under the Act. The representation by Kala Nand Sharma also enclosed an application dated 28.7.2010 for shifting of the Veneer Mill to Araria district where Kala Nand Sharma was operating the Veneer Mill. In pursuance thereto, queries were made from Ashok Kumar Agrawal through letter no. 936 dated 02.08.2010 of the Divisional Forest Officer, Araria.

6. In terms of the notice issued in the newspaper calling upon the Veneer Mill owners to come with their original papers, another representation was submitted by Ashok Kumar Bhagat bringing the following facts to the notice of the Committee. In the same, he had stated that the license no. 15 of 1994 issued under the Act was in the name of Anand Kumar Agrawal for operating a Veneer Mill M/s Calcutta Plywood and Anand Kumar Agrawal was operating the same as a partnership firm and that the name of the partners in the firm was not mentioned. He further disclosed that notarized deed agreement was executed on 26.06.2007 by which Anand Kumar Agrawal admitted Ashok Kumar Bhagat and Sanjay Kumar in the firm for operating the Veneer Mill M/s

WEB COPY

Calcutta Plywood. Further, it was contended that as per the agreement, Anand Kumar Agrawal retained only 10% share and Ashok Kumar Bhagat and Sanjay Kumar each were allotted 20.5% of shares. However, with regard to the remaining 49% share in the firm, nothing was mentioned in the agreement. Along with the representation, letter no. 789 dated 30.06.2009 of the Divisional Forest Officer, Araria was enclosed by which permission was granted for shifting of the Veneer Mill from Kishanganj district to Araria district. Another letter no. 1334 dated 06.08.2008 was also enclosed by which the Divisional Forest Officer, Araria had informed Anand Kumar Agrawal that permission for Veneer Mill has only been granted to his firm and only information regarding granting of Power of Attorney in favour of Ashok Kumar Bhagat has been received in the office.

7. During the hearing by the Committee, Ashok Kumar Bhagat and Kala Nand Sharma were present and both laid their claim for M/s Calcutta Plywood. Anand Kumar Agrawal admitted that he had admitted Kala Nand Sharma as partner in the firm with 75% share in the year 2000. In the aforesaid background, the authorities have not included the petitioner’s firm in the seniority list of Veneer Mills in the State of Bihar.

WEB COPY

8. Learned counsel for the petitioner submitted that the license of the Mill was continuing from the year 1994 and it is his fundamental right under Articles 19 (1) (g) and 301 of the Constitution of India to carry on trade, which implies that he has a right to induct partners for such business which cannot be curtailed by the authorities. It was further submitted that there is no change in terms of the license as the license is for running a Veneer Mill and how it is run, it is for the petitioner to decide and him having inducted partners in the firm is not a violation under the Act. Learned counsel also relied upon a decision of a coordinate Bench of this Court in the case of **M/s Champaran Timber and Allied Product vs. State of Bihar** reported as **2015 (2) PLJR 211**, to content that mere change of partnership is no ground to cancel the license. It was further contended that in the era of globalization, nobody can be restricted from keeping partners.

9. Learned counsel for the State submitted that the decision of the authorities cannot be faulted. It was submitted that even in the era of globalization, the petitioner cannot claim impunity and do things which are not permitted under the Act and further that there is no violation of any of the provisions of Articles 19(1)(g) and 301 of the Constitution of India and such stand is misconceived. With regard to the reliance by learned counsel for

WEB COPY

the petitioner on the judgment in the case of **M/s Champaran Timber and Allied Product** (supra), it was submitted that the same is not relevant to the issue involved in the present case, inasmuch as, it related to a situation where the authorities had accepted the change in the partnership and had granted the license in the name of the changed partnership firm but later on, they had taken a fresh view and had cancelled the license whereas in the present case, the change in partnership of the firm was never accepted by the authorities and further there was claim by different persons, which clearly shows violation of the provisions and blatant illegality.

10. Having considered the facts and circumstance of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The first and foremost contention of the petitioner that he can change the partnership/constitution of the firm, as far as the present context relating to grant of license in favour of the firm is concerned, is totally misconceived. The reference to Articles 19(1)(g) and 301 of the Constitution of India is equally misplaced for the reason that there is no issue with regard to there being any curb to practise any profession, or to carry on any occupation, trade or business as also freedom of trade, commerce and intercourse.

WEB COPY

11. The license under the Act is issued in favour of a partnership firm/individual. In the present case, the license was issued specifically in favour of M/s Calcutta Plywood through its sole proprietor Anand Kumar Agrawal. Thus, as far as the juristic entity in favour of whom the license was concerned, it was limited to Anand Kumar Agrawal, being the proprietor of the firm M/s Calcutta Plywood. If the petitioner is allowed to change the partnership, he may be permitted to do so with regard to any other business he may carry but as far as running of the Veneer Mill and its license is concerned, the same could not be through a changed partnership firm in which, besides Anand Kumar Agrawal, others were inducted. This would not be in confirmity with the basic provisions of law that a license issued in the name of a particular entity is sacrosanct and cannot be varied without due permission from the competent authority and if a person is allowed to do what has been done in the present case, it would amount to doing something which is impermissible otherwise, by taking a surreptitious route or by undermining, manipulating or misusing the legal provisions and safeguards with regard to issuance of such license. Once the license is specific, the change in the nature of the firm in favour of which the license is given would amount to the ownership of the firm having changed and, thus, it would amount

WEB COPY

to an illegal way of circumventing the law by automatically making persons, who were not issued the license, as partners by which they will be deemed to have been issued license. Thus, the license being given to the firm and the firm only having Anand Kumar Agrawal as the sole proprietor, at the relevant point of time, by changing the composition of the partnership, the ownership of the firm being changed cannot be permitted. Furthermore, provisions of Articles 19(1)(g) and 301 of the Constitution of India are not attracted in the present case. If such an absurd interpretation is given to such constitutional provisions, it would lead not only to anarchy but also an easy way where a person who has not been able to get a license under any Act may become a licensee only by virtue of getting himself added as a partner in any firm in favour of which such license has been granted.

12. The law requires that for any change in the composition of the firm or ownership of any company in whose favour license is given, has to be specifically permitted and allowed by the authorities for that changed partnership firm or changed owner of the company to get a right under such license. Moreover, the moment the ownership in the partnership firm is tinkered with, the firm which was originally given the license changes its nature and no more remains the same firm just because

WEB COPY

the name has not been changed of the firm. The name is only cosmetic as what actually is of essence are the real partners in the said firm or company. Thus, such induction changes the very nature and identity of the firm itself in law and it cannot be said that the license issued in favour of the firm, as it was originally, has to be continued no matter what changes are brought about in the partnership of such firm, which leads to the firm, for all purposes, becoming a new entity in the eyes of law.

13. In the background of what has been brought before the authorities, on facts also, it is clear that the petitioner Anand Kumar Agrawal is trying to play with the law and the authorities. He has made two different agreements with two sets of persons and the percentage allotted to them vary, which cannot be reconciled. On the one hand, Subhash Chandra Paul and Subrato Das have been made partners and thereafter, he had induced Kala Nand Sharma as partner through a non registered and non-notarized agreement in which Anand Kumar Agrawal retained only 25% of the share in the firm and remaining 75% share was allotted to Kala Nand Sharma, whereas, on the other hand, he also executed agreement admitting Ashok Kumar Bhagat and Sanjay Kumar and allotted 20.5% share each to them, whereas the fate of the remaining 49% share was not mentioned in the agreement.

WEB COPY

14. From the above, it is clear that the petitioner, Anand Kumar Agrawal, has played fraud, as he has transferred 41% of his share to Ashok Kumar Bhagat and Sanjay Kumar by an agreement dated 26.06.2007, inspite of him on 17.06.2000 itself having relinquished 75% of his share in favour of Kala Nand Sharma.

15. Thus, it is clear that the authorities have rightly taken a decision not to include the name of petitioner in the list of Veneer Mills in the State of Bihar. The Court also is in agreement with such decision and further is of the opinion that the petitioner, on the basis of the admitted factual position, has played fraud on the system for which he is dis-entitled to grant of any license and even liable to further action, in accordance with law.

16. With regard to reliance placed by learned counsel for the petitioner on the decision in the case of **M/s Champaran Timber and Allied Product** (supra), as has been rightly pointed out by learned counsel for the State, the same is totally misplaced, as it is in the background of a totally different factual matrix. In the said case, persons were inducted into the partnership firm which was taken notice of by the authorities and the same was also allowed and the license was issued in favour of the newly constituted partnership firm. Thereafter, again the matter was raked up and the authorities had proceeded to cancel the license. In

WEB COPY

such background, the Court had held that once the authorities had agreed to the change of partnership and had issued license also in favour of the remaining partners and there being no change in ownership and control of the saw mill, there could not be cancellation of the license. In the present case, there has been change in the composition of the partnership from time to time and even in the ownership and control of the saw mill, which has never been allowed by the authorities and no license in favour of any of the so-called partners has been issued, which is writ large from the facts as noted and discussed above.

17. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	
U	

WEB COPY