

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5760 of 2016**

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M/s Ajay Saw Mill through its proprietor Vijay Sharma, Son of Late Jaidev Sharma, resident of Village- Tulshipur, Police Station- Kharik, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Forest & Environment Department, Govt. of Bihar
2. The Principal Secretary, Forest and Environment Department, Government of Bihar, Patna.
3. The Principal Chief Conservator of Forest, Bihar, Patna.
4. The Conservator of Forest, Purnea Circle, Purnea.
5. The Divisional Forest Officer, Purnea Division, Purnea.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                              |
|----------------------|---|--------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Rajesh Kumar Singh,<br>Mr. Ranvijay Narain Singh<br>Mr. Dharmendra Kumar Singh<br>Mr. Manish Kumar Singh |
| For the Respondent/s | : | Ms. Anuradha Singh, SC-21<br>Mr. Anil Kumar Singh, AC to SC-21                                               |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**  
**ORAL JUDGMENT**  
**Date : 12-04-2019**

Heard the learned counsel for the petitioner and the State.

The instant writ petition has been filed for setting aside the order dated 24.01.2011 (Annexure-5) contained in Memo No. 390 dated 04.02.2011 issued under signature of Licensing Authority-cum-Divisional Forest Officer, Purnea and also for setting aside the order dated 20.06.2012 (Annexure-6) passed by the Prescribed Officer-cum-Conservator of Forest, Purnea Circle,



Purnea in Appeal No. 2P/2009, by which the appeal preferred against order dated 24.01.2011 has been rejected, as well as for commanding the respondent authorities to accept the returns and other related documents from the petitioner and allow him to run his Saw Mill in terms of Provision contained under Section 19 of the Bihar Saw Mills (Regulation) Act, 1990.

Learned counsel for the petitioner has submitted that license of the petitioner has been cancelled merely on two grounds; first, he was not maintaining stock register and second, he did not apply for renewal of license of his Saw Mill.

Learned counsel for the petitioner has submitted that firstly his license was cancelled by order dated 31.12.2001 as contained in Annexure-1. Thereafter petitioner preferred an appeal before the appellate authority. The appellate authority set aside the order of Divisional Forest Officer, Katihar vide order dated 05.08.2004 (Annexure-2) passed in Appeal No. 4/2002 and directed the Licensing Authority to reconsider the case of petitioner and pass appropriate order as no order was passed by the Licensing Authority. Thereafter petitioner moved to this Court vide C.W.J.C. No. 18279 of 2008. This Court by order dated 03.08.2009, as contained in Annexure-3, passed in aforesaid C.W.J.C. No. 18279 of 2008 directed the Licensing Authority



(Respondent No. 5 herein) to pass appropriate order in accordance with law. Thereafter the Licensing Authority (Respondent No. 5) issued notice bearing Memo No. 119 dated 08.01.2011, as contained in Annexure-4, by which petitioner was intimated the date of hearing fixed on 15.01.2011. The petitioner appeared before the Licensing Authority (Respondent No. 5) on 15.01.2011 and 24.01.2011. The Licensing Authority by order dated 24.01.2011 bearing Memo No. 390 dated 04.02.2011, as contained in Annexure-5, again cancelled the license of the petitioner giving same reason as mentioned in earlier order dated 31.12.2001 (as contained in Annexure-1).

Learned counsel for the petitioner has submitted that against the order of appellate authority dated 24.01.2011 as contained in Annexure-5, the petitioner preferred Appeal No. 2P of 2009 before the appellate authority. The appellate authority dismissed the appeal without giving any reason vide order dated 20.06.2012 as contained in Annexure-6.

Counter Affidavit has been filed on behalf of the State wherein the State has mainly taken the stand that license of the petitioner has been cancelled in violation of Section 9 of Bihar Saw Mill (Regulation) Act, 1990 and Rule 7 of Bihar Saw Mill (Regulation) Rule, 1993. It has been mentioned in the Counter



Affidavit that petitioner was bound to maintain the records of purchasing wood for sawing and disposal of wood and submit these returns of the account to concerned Divisional Forest Officer by a date not later than 10<sup>th</sup> of the following month. It has been further mentioned in the Counter Affidavit that petitioner, in complete violation of Section 9 of Bihar Saw Mill (Regulation) Act, 1990 and Rule 7 of Bihar Saw Mill (Regulation) Rule, 1993, had not submitted the monthly returns for the year from January, 2001 to December, 2001.

It has been mentioned in the Counter Affidavit that petitioner did not apply for renewal of license of his Saw Mill within time after depositing the dues required to run the Saw Mill.

Learned counsel for the petitioner has submitted that there is provision under Section 19 of the Bihar Saw Mill (Regulation) Act, 1990 for composition of offence. Respondent no. 5 has not considered the case of the petitioner in right perspective and has illegally cancelled the license of the petitioner.

This Court finds that respondents have got power to cancel the license under Section 7(5) of the Bihar Saw Mill (Regulation) Act, 1990. Section 9 of Bihar Saw Mill (Regulation) Act, 1990 requires submission of returns in such forms and to such officers and on such dates as may be prescribed. Same thing is



mentioned in Rule 7 of Bihar Saw Mill (Regulation) Rule, 1993, which speaks as under:

***“7. Submission of returns-***

- (1) The licensee shall maintain a register of daily purchase of wood for sawing and disposal in Form ‘D’.*
- (2) The licensee shall maintain a register of the monthly account of arrival, sawing and disposal of wood received for sawing only in Form ‘E’.*
- (3) The licensee shall submit the returns of these accounts to the concerned Divisional Forest Officer by a date not later than 10<sup>th</sup> of the following month.”*

This Court on perusing the provision of Section 9 of Bihar Saw Mill (Regulation) Act, 1990 and Rule 7 of Bihar Saw Mill (Regulation) Rule, 1993 does not find that these are mandatory provisions under the Act and for non-compliance of aforesaid provision authorities are empowered to cancel the license of the petitioner. These are irregularities which can be cured after giving proper opportunity of hearing to the parties. In this regard there is provision of composition of the offence under Section 19 of the Bihar Saw Mill (Regulation) Act, 1990.

Action of Respondent No. 5 in cancelling the license of the petitioner vide orders dated 24.01.2011 and 20.06.2012 as contained in Annexures- 5 and 6 only for committing such irregularities are not in accordance with law.



Therefore, aforesaid orders dated 24.01.2011 and 20.06.2012 as contained in Annexure 5 and 6 are hereby set aside.

This writ petition is accordingly allowed.

The Respondent No. 5 is directed to restore the license of petitioner within a period of two weeks from the date of receipt/production of this order.

The respondent will be entitled to charge from the petitioner the required fees as per law and penalty as provided.

**(Sanjay Priya, J)**

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