

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1337 of 2016

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Nand Kumar Sharma, Son of late Laxman Sharma, Resident of Village-Satuaa, Police Station -Baniyapur, District Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Environment & Forest, Sichai Bhawan, Patna.
2. The Principal Chief Conservator of Forest, Bihar Office at 4th Floor, Technology Bhawan, Bishwesharaiya Bhawan Campus, Baily Road, Patna.
3. The Divisional Commissioner, Saran Division, District Saran at Chapra, Bihar.
4. The Forest Conservator -cum-Authorized officer, Circle- Siwan, District Siwan, Bihar.
5. The Licensing Authority -cum-Divisional Forester Officer, Chapra, Forest Division, Saran (Bihar).
6. The Area officer of Forest, Masrakh, District Saran at Chapra , Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagannath Singh, Advocate.
		Mr. Rakesh Kumar, Advocate.
For the Respondent/s	:	Mr. Binay Kr. Pandey, A.C. to G.A. 2

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 19-02-2019

1. Heard Mr. Jagannath Singh, counsel for the petitioner and Mr. Binay Kr. Pandey, A.C. to G.A.2, counsel appearing on behalf of the State.

2. This writ petition has been filed seeking following reliefs.

i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the letter bearing No. 224 dated 15.2.2014 issued under signature of the Forest Conservator, Siwan Circle, Siwan, whereby the appeal preferred by the petitioner on



27.01.2014 against the order of cancellation of the Licence No. 49/96 of Saw Mill, has been rejected on the ground of delay in filing appeal.

ii) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the Office order No. 40 dated 22.4.2013 issued under signature of Licensing Authority-Cum-Divisional Forest Officer, Saran Forest Division, Chapra as contained in Memo No. 1074, whereby the License bearing No. 49/96 of the Saw Mill has been cancelled for the charge of repeatedly violating the provision of the Bihar Saw Mill Regulation Act, 1990 and a direction was issued for closure of the Saw Mill with immediate effect and dispose of the storage of timber within a period of one month.

iii) For holding that the petitioner is ready to deposit the fine for delay along with renewal licence fee for renewal of licence of his Saw Mill bearing No. 49/96.

3. Counsel for the petitioner submits that licence of the Saw Mill of the petitioner bearing No. 49/96 has been cancelled without following the principles of natural justice. Neither any show cause notice was served nor any opportunity of hearing was given to him before passing the impugned order of cancellation as contained in Annexure-6. He further submits that in terms of Section 7 (5) of Bihar Saw Mills Regulation Act, 1990, the Licensing authority is required to provide an opportunity of show cause before revoking or suspending the licence of the petitioner. The respondent has not complied with aforesaid provision before cancelling the licence of the petitioner.



4. Counter affidavit has been filed on behalf of the respondent No. 5. It is mentioned in the counter affidavit that notice of show cause was sent to the petitioner by letter No. 896 dated 1.4.2013. Photocopy of aforesaid Notice has been enclosed as Annexure-A to the counter affidavit. The Licensing Officer has given an opportunity of hearing to petitioner. The petitioner did not appear on the date fixed for hearing. Thereafter, the Licensing Officer has passed an order for cancellation of licence of the petitioner.

5. Counsel for the petitioner has filed rejoinder to the counter affidavit stating therein that he was never served with any notice which has been enclosed as Annexure-A to the counter affidavit. He further submits that he was never served with copy of cancellation of the licence of his Saw Mill as contained in Annexure-6 which was passed on 22.4.2013 issued vide Office Order No. 40. He submits that after submission of Renewal Form along with Bank Draft in the month of May, 2013, no order has been passed regarding renewal of licence. The petitioner enquired about the same and came to know that his licence has been cancelled and thereafter, he filed an Appeal before the Forest Conservator, Siwan Circle, Siwan. The Appellate Authority has refused to entertain the appeal on merit and rejected the same as barred by limitation.

6. Section 7 of Bihar Saw Mills Regulations Act, 1990 lays down as follows:



“7. Grant, renewal, revocation or suspension of licence – (1) An application for licence under Section 5 shall be in such form and shall be accompanied by such application fee and such security deposit for due observance of the conditions of the licence, as may be prescribed.

(2) On receipt of the application under sub-section (1), the Licensing Officer may after making such enquiry, as it may deem fit:-

(i) grant the licence; or

(ii) by order in writing for reason in brief to be stated therein, refuse to grant the licence:

Provided that no order refusing to grant the licence shall be passed unless the applicant has been given a reasonable opportunity of being heard”.

7. The provision of Section 7 (5) of Bihar Saw Mills (Regulation) Act, 1990 envisages that –

“If the Licensing Officer is satisfied, either on a reference made to it in this behalf or otherwise, that -

(a) the licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill or saw pit; or

(b) the licensee has without reasonable cause, failed to comply with any of the conditions of the licence or any direction lawfully given by the Licensing Officer or has contravened any of



the provisions of this Act or the Rules made thereunder; or

(c) the licensee has, in the premises of the saw mill or saw pit-wood which he is not able to account for satisfactorily and consequently which is liable for confiscation under Section 10.

Then without prejudice to any other penalty to which licensee may be liable under this Act the Licensing Officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the licence and forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted”.

8. In the instant case from perusal of Annexure-6, this Court finds that petitioner was not given opportunity of hearing before passing the aforesaid order. The State has filed counter affidavit annexing Annexure-A stating that he has issued notice before passing the order, but there is no mention in the order as contained in Annexure-6 that any show cause was issued to the petitioner.

9. The petitioner on the other hand filed Annexure-8 in support of the fact that the Appellate Authority without considering the case of petitioner on merit, dismissed the same on the ground of delay in filing the appeal.

10. In aforesaid circumstances, this Court finds that the order passed in Annexure-6 is not in accordance with law. Hence the same is hereby set aside.



11. The Licensing authority-cum-District Forest Officer, Saran, is directed to pass fresh order in accordance with law with regard to renewal of licence of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

12. This writ petition is accordingly allowed with aforesaid direction.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	28/02/2019
Transmission Date	

