

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1734 of 2016

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Mubarak Hussain @ Md. Mubarak Hussain, son of late Refakat Hussain,
resident of village- Chainpur Dhaka, P.S.- Dhaka, District- East Champaran.
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Conservator of Forests, Bihar, Patna.
 2. Regional Chief Conservator of Forest, Muzaffarpur.
 3. Divisional Forest Officer, East Champaran, Motihari.
 4. Divisional Manager, Forest Project Office, Bettiah.
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uma Shankar Verma, Advocate Mr. Binod Kumar Mishra, Advocate
For the Respondent/s	:	Smt. Binita Singh, SC-28 Mr. Nishant Kumar Jha, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date : 15-05-2019

This writ application has been filed to quash the order dated 22.06.2015 bearing Office Order No.91 passed by Three Members Committee headed by the Principal Chief Conservator of Forests, Bihar, Patna, by which the authorities did not renew the license of the Petitioner.

2. It has been submitted on behalf of the Petitioner that he was granted license of Saw Mill bearing License No.18 dated 11.12.1995 by the Respondent and was running his business and paying necessary taxes for the same. He was doing business of furniture and furnished wooden items. The Petitioner filed application in the prescribed format before the concerned authority for renewal of his license, but no order was passed. The Petitioner



filed CWJC No.2576 of 2009, which was disposed off on 26.02.2009 with observation that grievance with regard to renewal of the license of a Saw Mill can definitely be looked into in the first instance by the licensing authority, whereafter if the Petitioner is aggrieved he has to move the concerned District Judge.

3. In compliance of the order dated 26.02.2009 passed by this Court, the Petitioner filed representation on 04.07.2009/ 20.09.2009 before the Divisional Forest Officer, Motihari District-East Champaran, annexing copy of the order passed by the Hon'ble Court as well as copy of the writ application of CWJC No.2576 of 2009. The District Forest Officer, Motihari, sent a letter to *Van Sangrachak* Department, Siwan, on 14.10.2009 bearing letter No.1045 to furnish the documents for taking final decision about license because license was issued by the Bettiah Office and records have not yet been transferred to Motihari as yet.

4. The Forest Officer, Motihari, on 05.08.2010 sent a letter to *Pramandaliya Prabandhak*, Bettiah, West Champaran, for furnishing the information with regard to original documents.

5. The Committee on 08.09.2012 had prepared a panel of 82 Saw Mills. Later on, the Committee prepared a fresh list of total 86 licensee in the District of East Champaran. In pursuance of the objection invited by the authority through newspaper dated 25.08.2012, eight persons filed objection. A fresh list of 86



licensees out of 97 was finally prepared and 11 licensees were referred to the Government for reconsideration. The said order was passed by the Committee on 08.09.2012, which is enclosed as Annexure-6.

6. It is alleged that the authority issued a general notice in newspapers on 25.08.2012 and asked licensees to file objection. In pursuance to that the Petitioner filed an objection to the Chief Conservator of Forest, Bihar, Patna, on 04.09.2012 for reconsideration of renewal of the license. The District Forest Officer sought legal opinion from the Government Advocate, Motihari, who sent the opinion on 01.08.2013 to the District Forest Officer about the guidelines.

7. It has been submitted that Petitioner was running Saw Mill after issuance of license in 1995, but after expiry of the tenure of the license, the Petitioner approached the licensing authority for renewal of the license. In the meanwhile, SLP was filed bearing No.202 of 1995) in the Apex Court. The Apex Court issued some guidelines with regard to issuance of license on 23.01.2003 and ordered to constitute a committee for issuance of license in different States including the State of Bihar under the Bihar Saw Mills Regulation Act, 1990, and fixed the quota in different state at district level.



8. The Petitioner again filed CWJC No.22761 of 2011 as contained in Annexure-8 to the writ application when the authority did not take any action, which was disposed off on 04.03.2013 with direction to dispose off the representation. Xerox copy of the order dated 04.03.2013 passed in CWJC No.22761 of 2011 is enclosed as Annexure-10. The Petitioner filed representation before the District Forest Officer along with copy of the order. The District Forest Officer, Motihari, again did not consider grievance of the Petitioner and the same was rejected on 09.01.2014. Xerox copy of the order dated 09.01.2014 passed by the Authorized Officer cum Divisional Forest Officer is enclosed as Annexure-11 to the writ application.

9. The Petitioner again challenged the aforesaid order by filing CWJC No.3305 of 2014, which was disposed off with direction/observation on 22.01.2015. The order of the Hon'ble Court dated 22.01.2015 passed in CWJC No.3305 of 2014 is enclosed as Annexure-12 to the writ application.

10. The Petitioner filed representation along with the order of the Hon'ble Court dated 22.01.2015 and all relevant documents as well as copy of the original license for renewal of the license on 02.02.2015 before the Principal Chief Conservator of Forest, Patna. Xerox copy of the representation dated 02.02.2015 is enclosed as Annexure-13 to the writ application.



11. The Petitioner on 05.06.2015 again appeared before the authority with a request to renew the license after taking renewal fee as per law, but again Three Members Committee rejected the same without reasoned order and without hearing.

12. The Respondent authority on 25.03.2015 issued notice to appear before the authority along with the relevant documents. The Petitioner had already furnished documents along with original license which was kept on record. Later on, date was fixed for hearing on 19.06.2015, but on that date no order was passed. The Principal Chief Conservator of Forest, Bihar, Patna, passed order on 22.06.2015, which was not communicated to the Petitioner. Xerox copy of the order dated 22.06.2015 passed by the Principal Chief Conservator of Forest, Bihar, is enclosed as Annexure-14 to the writ application, which is under challenge in this writ application.

13. Counsel for the Petitioner submits that Saw Mill of the Petitioner was sealed on 27.09.2011 by Range Officer of Forest, Motihari, when it was found in operation without any license and case has been instituted and prosecution sanction has been accorded in Offence Report No.2014/11.

14. Detailed Counter Affidavit has been filed stating therein that in accordance with the order passed by the Hon'ble Supreme Court in WP (C) No.202 of 1995 and recommendations



made by the Central Empowered Committee in its report dated 11.06.2008, the State of Bihar, by Resolution No.2675 dated 30.08.2010, has fixed the number of Saw Mills for every district of the State. In accordance with the said resolution, maximum number of Saw Mills in the State has been restricted to the number 1919 and in the said resolution the guidelines for preparation of seniority lists of Saw Mills at District Level has also been laid down. Xerox copy of the resolution dated 30.08.2010 is enclosed as Annexure- A to the Counter Affidavit.

15. The number of Saw Mills for Motihari District has been fixed as 86 by the said resolution dated 30.08.2010 and the final seniority list of licensed Saw Mills of the said district has been published vide Office Order No.35 dated 20.09.2012 of the office of Principal Chief Conservator of Forests, Bihar, which contain name of 97 Saw Mills of the said district. Hence, there was already excess licensee Saw Mills existing in the district of Motihari than the number fixed for the said district and the name of Saw Mill of the Petitioner is not included in the said list. Xerox copy of the order dated 20.09.2012 is enclosed as Annexure- B to the Counter Affidavit.

16. The Divisional Forest Officer, Motihari, issued a provisional seniority list of Saw Mills of Motihari District in accordance with the provisions made in resolution dated



30.08.2010 of the State Government. The aggrieved persons were asked to submit their objections on the provisional list. Name of the Petitioner was not included in the provisional list of Saw Mills, because he failed to submit his objection with request to include his name in the list.

17. The objection filed against the provisional list of Saw Mills were considered by the Committee under chairmanship of the Divisional Commissioner, Muzaffarpur, which has been constituted by resolution dated 30.08.2010 of the State Government. Final seniority list of Saw Mills was published after disposal of the objections by the Committee. Since name of the Petitioner was not included in the provisional list and he had not filed any objection to include his name in the list, therefore, his name was not included in the seniority list of Saw Mills of Motihari District, which was published by the Committee under the chairmanship of Divisional Commissioner, Muzaffarpur. The seniority list of Saw Mills published by the Committee under chairmanship of Divisional Commissioner constituted by resolution dated 30.08.2010 were filed before the Hon'ble Supreme Court and after examination a report was submitted by the Central Empowered Committee on 09.03.2012. The Hon'ble Supreme Court accepted the report and by order dated 30.03.2012 directed the State of Bihar to finalize the seniority lists of Saw



Mills in conformity with various order passed by Hon'ble Court and also the observation and recommendation made by the Central Empowered Committee in its report dated 09.03.2012.

18. It has further been mentioned in the Counter Affidavit that in accordance with observations made by the Central Empowered Committee in its report dated 09.03.2012, the name of Saw Mills owners, who had not obtained license under the Bihar Saw Mills (Regulation) Act, 1990, were required to be removed from the seniority lists prepared and published by the Committee under the chairmanship of the Divisional Commissioners. The State Government vide resolution No.2563 dated 16.08.2012 modified the resolution dated 30.08.2010 to certain extent and formed a Committee under the chairmanship of Principal Chief Conservator of Forests, Bihar, to finalize the seniority list of Saw Mills of every district of the State.

19. Notice was published in the newspapers giving an opportunity of unlicensed Saw Mill owners to produce license for their Saw Mills in case it was issued to them. In pursuance of the aforesaid notice, representation was filed by the Petitioner, which was put up before the Committee under the chairmanship of Principal Chief Conservator of Forests, Bihar, in its meeting held on 16.08.2012. The claim of the Petitioner was not considered on the grounds that he had not filed any objection before the



Committee under the chairmanship of Divisional Commissioner, Muzaffarpur, and his name was not included in the list published by the said Committee. Therefore, name of Saw Mill of Petitioner was not included in the list of saw mills of Motihari District. Copy of minutes of the meeting dated 08.09.2012 has been enclosed as Annexure-6 to the writ application.

20. Having heard both sides, in detail, it appears that Petitioner filed CWJC No.2576 of 2009 before the Hon'ble Court with prayer for renewal of his Saw Mill license. The Hon'ble Court by order dated 26.02.2009 held that renewal of license of Saw Mill can definitely be looked into in the first instance by the licensing authority, whereafter if the Petitioner is aggrieved he has to move the concerned District Judge as contained in Annexure-2 to the writ application.

21. The Petitioner filed another writ bearing CWJC No.22761 of 2011 for renewal of his license, which was disposed off on 04.03.2013 (Annexure-10 to the writ petition) with direction to the licensing authority to take final decision with respect to the Petitioner's case. The claim of the Petitioner was examined by the Licensing Authority cum Divisional Forest Officer, Motihari. The Petitioner along with his representation had enclosed Xerox copy of License No.18/1995, which was issued in his name by Divisional Manager, Forest Project Division, Bettiah. In this



regard, it is relevant to mention that area in which Saw Mill of the Petitioner was established was under Forest Project Division, Bettiah. Thereafter, up to October, 2003, it came under Tirhut Forest Division, Muzaffarpur. After creation of Motihari Forest Division in November, 2003, it came under Motihari Forest Division.

22. The file concerned with license of the Petitioner was not found available in office of Divisional Forest Officer, Motihari. Correspondences were made with the Divisional Manager, Project Forest Division, Bettiah, but no records could be made available to the Licensing Officer, Motihari.

23. The Petitioner was given opportunity to produce the original copy of the license but he failed to produce the original copy. Hence, Licensing Officer cum Divisional Forest Officer, Motihari, by his order contained in Memo Mo.31 dated 09.01.2014, as contained in Annexure-11 to the writ application, did not accept the claim of the Petitioner that he has been issued license under Bihar Saw Mills (Regulation) Act, 1990, and held that in the light of order passed by Hon'ble Supreme Court on 29.10.2002 in WP(C) No.202 of 1995, a license cannot be issued without obtaining approval of Central Empowered Committee.

24. The Petitioner again filed CWJC No.3305 of 2014. It was admitted by the Petitioner in that writ application that at the



relevant time original license was not available with him. The original license was produced before the Hon'ble Court. The Hon'ble Court by order dated 22.01.2015 (Annexure 12 to the writ application), has held that Petitioner's case requires reconsideration. The matter was remanded back to the Three Members Committee headed by the Principal Chief Conservator of Forest, Bihar, to consider the case of the Petitioner for renewal of license and for placement in the seniority list afresh and to pass appropriate orders in accordance with law after giving proper opportunity of hearing to the Petitioner.

25. In compliance of the order dated 22.01.2015 passed by the Hon'ble Court in CWJC No.3305 of 2014, the Divisional Forest Officer, Motihari, was asked to provide the records with regard to said writ application and information regarding license of the Petitioner. After receipt of report of Divisional Forest Officer, Motihari, it was found that no records regarding the license of the Petitioner was available in his office. Therefore, Petitioner was asked to submit following information vide letter No.1249 dated 25.03.2015 of Principal Chief Conservator of Forests, Bihar:

- (i) Date of submission of application, application fee and security deposit for license under Bihar Saw Mills (Regulation) Act, 1990, along with proof,



- (ii) Date of submission of application and renewal
fess for renewal of license after 31.12.1995
along with proof,
- (iii) Information regarding renewal of license, if
any, along with its copy.

Xerox copy of the letter dated 25.03.2015 is enclosed
as Annexure- C to the Counter Affidavit.

26. The Petitioner, in reply to the letter dated 25.03.2015,
admitted that after issuance of license in the year 1995, he had not
deposited fees for its renewal but had requested for its renewal
time to time. The Petitioner did not mention date of submission of
application, application fee and security deposit for the license.
Xerox copy of reply to the letter dated 25.03.2015 is enclosed as
Annexure- D to the Counter Affidavit.

27. The meeting of the Committee under the
chairmanship of Principal Chief Conservator of Forests, Bihar, was
held on 19.06.2015 in which Petitioner appeared for hearing on the
said date. During hearing, it was admitted by him that after
issuance of license in the year 1995, he had not deposited any
application for renewal of his license along with renewal fees. He
has submitted that he had filed application for renewal of license in
prescribed format and thereafter filed writ application bearing
CWJC No.13134 of 2003, which was dismissed for non-



prosecution. The Divisional Forest Officer, Motihari, in his report has mentioned that there was no record available regarding the license of the Petitioner in his office. He had not submitted any application for renewal of his license in his office.

28. As such, in terms of Bihar Saw Mills (Regulation) Act, 1990, and Bihar Saw Mills (Regulation) Rules, 1993, Petitioner was not holding any license under this Act from the year 1996 onwards. The Saw Mill of the Petitioner was sealed on 27.09.2011 by Range Officer of Forest, Motihari, when it was found in operation without any license and case has been instituted against him.

29. The Committee after taking into consideration that Petitioner never applied for renewal of his license held that it was not possible to renew the license after lapse of period of almost two decades. Therefore, the Committee rejected the claim of renewal of license of the Petitioner as well as inclusion of name of his Saw Mill in the seniority list of Saw Mill of Motihari District issued vide order contained in Memo No.2205 dated 22.06.2015, which has been annexed as Annexure-14 to the writ application.

30. As such, from aforesaid facts, it is clear that Petitioner was initially having license No.18 dated 11.12.1995.

31. The Petitioner was required to submit application for renewal of license for establishing and operation of Saw Mills.



Section 7 of The Bihar Saw Mills (Regulation) Act, 1990, prescribes for grant, renewal, revocation or suspension of license.

32. By Rule 3 of the Bihar Saw Mills (Regulation) Rules, 1993, the format of the application for license has been prescribed. Along with application, a person is required to deposit Rs.1000/- as application money and Rs.2000/- as security deposit.

33. Sub rule 3 of the Rule 4 of Bihar Saw Mills (Regulation) Rules, 1993, clearly mandates that the license issued shall be valid for a calendar year for which it was issued.

34. Under Rule 6, a license holder is required to apply for renewal of the license at least one month before expiry of the license in prescribed application form along with Rs.1000/- as renewal fee.

35. Under Section 7(5) of the Bihar Saw Mills (Regulation) Act, 1990, the Licensing Officer is authorized to revoke a license of a Saw Mill, which has ceased to operate after giving opportunity of show cause to owner of the Saw Mill.

36. The Principal Chief Conservator of Forests, Bihar, in his order dated 22.06.2015 (Annexure-14) has mentioned that during hearing the Petitioner failed to produce any document to show that he had made any attempt for renewal of his license after 1995. Therefore, after lapse of almost two decades, it is not possible to renew the lapsed license. It is also mentioned in the



aforesaid order that Petitioner was found running his saw mill without license and a case has been instituted against him and prosecution sanction has been accorded in Offence Report No.2014/11.

37. The writ Petitioner was accorded opportunity by Principal Chief Conservator of Forests, Bihar, vide Letter No.1249 dated 25.03.2015 to provide details regarding renewal of license with respect to date of submission of application and security deposit for license under Bihar Saw Mills (Regulation) Act, 1990. The Petitioner failed to produce any such document. On the other hand, he has given reply to the aforesaid letter dated 25.03.2015, as contained in Annexure- D to the Counter Affidavit, that after issuance of license in 1995 he had not deposited fees for its renewal but had requested for its renewal time to time. He has not mentioned date of submission of application, application fee and security deposit for the license.

38. Under such circumstances, in terms of sub rule 3 of Rule 4 of Bihar Saw Mills (Regulation) Rules, 1993, license issued to the Petitioner in 1995 had lapsed on 31.12.1995. There was no proof submitted by the Petitioner before the authority that he had applied for renewal of his license at least one month before expiry of the license in prescribed format with rupees one thousand



renewal fee as provided under Rule 6 of the Bihar Saw Mills (Regulation) Rules, 1993.

39. It also appears from the report of the Divisional Forest Officer, Motihari, submitted before the Principal Chief Conservator of Forests, Bihar, that without renewal of license after the year 1995, (year in which license was issued to the Petitioner) the Petitioner was running the Saw Mill without valid license. Saw Mill of the Petitioner was sealed on 27.09.2011 by Range Officer of Forest, Motihari, when it was found in operation without any license and case has been instituted and prosecution sanction has been accorded in Offence Report No.2014/11.

40. The name of Saw Mill of the Petitioner has not been included in seniority list of Saw Mill of Motihari District. The Principal Chief Conservator of Forests, Bihar, has mentioned in the impugned order that license of the Petitioner cannot be renewed after lapse of almost two decades.

41. This Court finds from the materials available on record that Petitioner could not produce any proof before the authority of submitting any application for renewal of license along with requisite fee in terms of Rule 6 of the Bihar Saw Mills (Regulation) Rules, 1993, one month before expiry of license as required under Rule 3 of The Bihar Saw Mills (Regulation) Rules, 1993. The license issued to the Petitioner in 1995 was valid only



for a calendar year i.e. 31.12.1995. Thereafter, Petitioner was found running Saw Mill without any valid license for which Saw Mill of the Petitioner was sealed on 27.09.2011 by Range Officer of Forest, Motihari, when it was found in operation without any license and case has been instituted and prosecution sanction has been accorded in Offence Report No.2014/11.

42. The Hon'ble Supreme Court in the judgment reported in *AIR 1962 SC 1210 (Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, Biharsharif and ors.)* has held that "*In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance*".

43. Therefore, this Court does not find any merit in the submission of the Petitioner that the impugned order dated 22.06.2015 bearing Office Order No.91 has been issued by the authorities without looking into observation of this Court as made in order dated 22.01.2015 passed in CWJC No.3305 of 2014 (Annexure-12).

44. In the result, this Court does not find any illegality in order dated 22.06.2015 bearing Office Order No.91 passed by Three Members Committee headed by the Principal Chief Conservator of Forest, Bihar, Patna, as contained in Annexure-14.



45. This writ application is, accordingly, **dismissed**.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	11-04-2019
Uploading Date	18-05-2019
Transmission Date	N/A

