

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13063 of 2013

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Md. Manjur S/O Late Md. Shafique R/O Patna Gaya Road, PS- Jehanabad,
District- Jehanabad

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary Department Of Environment and Forest, Government Of Bihar, Sichai Bhawan, Secretariat, Patna Bihar
2. The Principal Chief Conservator Of Forests, Department Of Environment And Forest, Government Of Bihar, 4th Floor, Technology Bhawan, Bailey Road, Patna
3. The Conservator Of Forest, Gaya Circle, Gaya, Bihar
4. The Licensing Officer Cum Divisional Forest Officer, Gaya Forest Division, Gaya.
5. The Forest Range Officer, Jahanabad Range, Jahanabad
6. Md. Raun S/O Late Md. Shafique, R/O Mohalla Gareria Khand, P.S. Jahanabad, District- Jahanabad, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Ramadhar Singh GP-29
		Mr. Shivendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT

Date : 17-05-2019

The petitioner has made prayer for quashing the order dated 10.9.2012 passed in Appeal No. 1 of 2011 by the Court of Forest Conservator, Gaya Circle, Gaya, upholding the order of cancellation of Licence of this petitioner dated 19.01.2011 passed by respondent no.5.



Learned counsel for petitioner submits that petitioner had preferred Revision No. 10 of 2013 before the Principal Secretary, Environment and Forest, Government of Bihar, which was disposed of by order dated 20.05.2013 with observation that there is no provision of revision with the Secretary and matter can be heard by the High Court. The copy of the aforesaid order dated 20.05.2013 passed by the Principal Secretary, Department of Environment and Forest, Government of Bihar, in Forest Revision Case No. 10 of 2013 has been enclosed as Annexure-2 to writ petition.

The case of the petitioner is that petitioner and his brother Md. Raun, were jointly holding a license of saw mill bearing License No. 19/1997. The saw mill was being looked after by this petitioner and his brother, namely, Md. Raun. Md. Raun was merely added in the business as he was full-brother of this petitioner. Md. Raun never participated in the business on day-to-day basis and the daily affairs of the business was looked after only by this petitioner. There was some family dispute between the petitioner and his elder brother, as a result of which, a partition suit, bearing No. 122 of 1997, was filed before the Munsif, Jehanabad, which was decided by order dated 18.12.1997 on basis of a compromise deed, in which the



properties were mutually divided amongst the petitioner and his brother. The land on which the saw mill of the petitioner was situated bearing plot nos. 1778 and 22 was allotted to the petitioner in the Title Suit.

Further case of the petitioner is that his brother, namely, Md. Raun left the saw mill of petitioner and started another business of saw mill on another plot. Subsequently, he applied for a license in his own name before the Divisional Forest Officer, Gaya on 07.09.1998. The photocopy of the application filed by Md. Raun is Annexed as Annexure-4 to the writ application. Md. Raun was granted licence bearing No. 19/1997 and licence of this petitioner was re-numbered as 19A/1997.

The renewal of license No. 19/97 was in the joint name of this petitioner and Md. Raun till the year 1998. The brother of petitioner, namely, Md. Raun, for the first time, in the year 2000, got renewed the license bearing no. 19 of 1997 in his own name. The list of selected saw mills was prepared in the year 2003, pursuant to the directions issued by the different authorities and in that list the name of this petitioner was shown first and name of Md. Raun was shown in the excess list.

It is the further case of the petitioner that Md. Raun challenged the aforesaid list before the Chief Conservator of



Forest and the Chief Conservator of Forest, vide order contained in letter dated 2.8.2004, rejected the objection of the brother of the petitioner. The aforesaid order dated 2.8.2004 passed by the Chief Conservator of Forest was never challenged by the brother of the petitioner, namely, Md. Raun, in any court of law or before any other authority and this order attained finality.

Further case of the petitioner is that Md. Raun made another application before the Chief Conservator of Forest raising objection to the seniority list, wherein, the saw mill of the petitioner was placed at Sl. No. 2 and the saw mill of Md. Raun was placed at Serial No. 16. The Principal Chief Conservator of Forest directed for an enquiry and thereafter a report was submitted by the Forest Conservator, based upon which, the Principal Chief Conservator of Forest, vide his letter no. 4 dated 19.01.2006, placed the saw mill of Md. Raun at sl. no. 2 instead of the saw mill of the petitioner. Further, he directed that in view of the report of the Forest Conservator, Gaya, proceeding against this petitioner may be initiated under the Bihar Saw Mills (Regulation) Act, 1990. Pursuant to this letter, licence of the petitioner was cancelled by the Licensing Authority-cum-Divisional Forest Officer, Forest Division, Gaya vide order dated 19.01.2011.



Being aggrieved, the petitioner filed appeal before the Forest Conservator, Gaya Circle vide Appeal No. 1 of 2011 against the order dated 19.1.2011 passed by the Licensing Authority-Cum-Divisional Forest Officer, Gaya, which was dismissed by order dated 10.9.2012. Against the said order, the petitioner preferred writ application bearing CWJC No. 357 of 2013 which was disposed of by the Hon'ble Court with direction to avail the remedy of revision and the court granted further liberty to seek any interim orders from the revisional authority.

Learned counsel for petitioner submitted that earlier Principal Chief Conservator of Forest, vide letter dated 2.8.2004, after examination of records, had found that the objection of the brother of the petitioner, Md. Raun, was not tenable and found in the records that license owned by the petitioner was older.

Learned counsel for petitioner submits that earlier order passed by the Principal Chief Conservator in favour of the petitioner was never brought to the notice of successor Principal Chief Conservator of Forest and deceitfully and maliciously subsequent enquiry was made. The copy of the enquiry was never served upon the petitioner neither any show cause was



issued to the petitioner upon the findings of the enquiry officer. The sales tax registration of the petitioner is oldest in the District of Jehanabad which is still in operation and the petitioner is depositing sales tax against this very sales tax registration. The licence of the petitioner has been renewed by the Forest Officer in normal course and no any objection was raised. The brother of the petitioner Md. Raun has misguided the department only to gain a position in the seniority list of the saw mill. The successor Principal Chief Conservator of Forest has passed the order in supercession of the earlier order passed by the predecessor Principal Chief Conservator of Forest, thus, resulting into grave error causing prejudice to the petitioner. The license of Md. Raun was allegedly issued dividing the old licence behind the back of the petitioner and the petitioner being old and lawful business owner was cheated.

A counter affidavit has been filed on behalf of respondent nos. 1 to 5, wherein, it has been mentioned that license No. 19 of 1997 was renewed in the year 1998, which was in the joint name. After partition between brothers due to land dispute the then Licensing Authority- cum- Divisional Forest Officer, Gaya issued new license in the name of the petitioner bearing license No. 19A/97. License no. 19/97 was issued in the name of Md.



Raun. The seniority list for the District of Jehanabad was prepared, in which name of the petitioner and his saw mill, being license no. 19A/97, was fixed at Sl. no.2 and the license no. 19/97 of Md. Raun was found last in excess list. The aforesaid list was challenged by Md. Raun before the Principal Chief Conservator of Forest, Bihar, Patna, which was rejected.

The selected list of the saw mill of Jehanabad District was prepared and communicated by the Principal Chief Conservator of Forest vide Office Memo No. 03/Ara Mill 02/04-2368 dated 25.5.2004 in which the petitioner was given seniority at Sl. no. 2 and Md. Raun was given seniority at Sl. no. 16. The objection was made before the Principal Chief Conservator of Forest, Bihar, Patna by Md. Raun against the selection list and the Conservator of Forest Gaya was directed to do thorough enquiry. He submitted a detailed enquiry report vide office letter no. 1518 dated 20.12.2005. On the basis of the report of Conservator of Forest, Gaya Circle, the Principal Chief Conservator of Forest, Bihar, Patna, vide his office order no. 4 dated 19.01.2006, has ordered that the saw mill of Md. Raun having licence no. 19/97 be placed at Sl. no. 2 in the seniority list instead of the writ petitioner. Further, by his Memo No. 148 dated 19.1.2006, in view of the report of the Conservator of



Forest, Gaya Circle, Gaya, the Principal, Chief Conservator of Forest, Bihar Patna has directed to initiate legal proceeding against the petitioner under the provisions of the Bihar Saw Mills (Regulation) Act, 1990.

As per the report of the Conservator of Forest, it was found that licence no. 19A/97 sanctioned for the petitioner was found wrong and the licence was issued against the provisions of the Bihar Saw Mills (Regulation) Act, 1990 as well as the provisions of Bihar Saw Mills (Regulation) Rules 1993. The Conservator of Forest, Gaya Circle has held that licence issued in favour of the petitioner was in violation of the Bihar Saw Mills (Regulation) Act, 1990. The licence of petitioner was subsequently cancelled after hearing the parties by the Licensing Authority-cum- Divisional Forest Officer, Gaya citing the reasons that in order to establish the new licence one has to submit the application in prescribed format and the application fees and security deposit has to be deposited by the applicant. It was found during enquiry that nothing was followed in this matter, and as per enquiry report of Conservator- cum- prescribed authority, the licence no. 19A/97 of the writ petitioner was cancelled. He was directed to close the saw mill within 15 days otherwise confiscation proceeding will be



initiated against the said saw mill. The order was communicated to the writ petitioner vide office memo no. 246 dated 19.1.2011. The copy of the order dated 19.1.20011 is annexed as Annexure-A to the counter affidavit.

The petitioner filed writ application bearing CWJC No. 5963 of 2011, after being aggrieved by order dated 19.1.2011 of the Licensing authority- cum- Divisional Forest Officer, Gaya which was disposed of by the Hon'ble Court with direction to avail remedy of appeal before the Conservator of Forest, Gaya Circle. As per direction of the Hon'ble Court, the petitioner filed appeal before the Conservator- cum -prescribed authority vide appeal no. 1 of 2011, which was dismissed by order dated 10.9.2012 and upheld the order dated 19.1.2011 passed by the Licensing Authority -cum- Divisional Forest Officer, as contained in Annexure-1 to the writ application.

It was found during enquiry that from the starting itself, license no. 19/97 was obtained for running a single saw mill, but in contrary, two saw mills were established in two separate places. A separate licence was issued in the name of the petitioner in the year 1999 numbering licence no. 19A/1997. In the same renewed licence there is no mention of the detail of land in which the saw mill was established. The name of the



owner of the land also did not find mention in the licence. The then Licensing Authority –cum- Divisional Forest Officer issued two separate licence, one in the name of Md. Raun vide licence no. 19/97 and another license in the name of the petitioner bearing license no. 19A/97. The issuance of two separate licence amounts to violation of the Bihar Saw Mills (Regulation) Act,1990 and Bihar Saw Mills (Regulation) Rules, 1993.

For establishment and operation of saw mill, a licence is required to be obtained from the Licensing Authority in terms of Section 5 of the Act. For obtaining licence for saw mill, an application in prescribed format, as per Rule, is required to be submitted alongwith non-refundable application fee of Rs. 1000/- and refundable security amount of Rs 2000/-. The detailed enquiry report submitted by the Conservator of Forest, Circle Gaya by letter no. 1518 dated 20.12.2005 to the Principal Chief Conservator of Forest has clearly mentioned that writ petitioner fabricated and forged the document and illegally obtained licence No. 19A/1997 by manipulating the actual state of affairs and got the same renewed over the year. When the issues were enquired and the objections were heard, while fixing the seniority list, it was found that the said saw mill licence obtained by separating/ partitioning the original licence in two



separate licence, is contrary to the Bihar Saw Mills (Regulation) Act, 1990. Thereafter, the licence bearing no. 19A/97 issued in the name of petitioner was cancelled by order dated 19.1.2011.

The main question for determination in this writ application is whether the license no. 19A/1997 issued in the name of petitioner is a valid licence in terms of provision of Section 5 of the Bihar Saw Mills (Regulation) Act, 1990 and Rule 4 of the Bihar Saw Mill (Regulation) Rules, 1993. Section 5 of the Bihar Saw Mills (Regulation) Act, 1990 and Rule 4 of the Bihar Saw Mill (Regulation) Rules, 1993 are quoted below:

“Section 5. Application for licence- On and from the appointed day:-

- (1) no person shall establish a saw mill or a saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act;
- (2) no person shall operate a saw mill or a saw pit in existence on the said date, unless he is granted a licence in that behalf under this Act on an application made by such person within a period of thirty days from such date.”

Rule 4 of the Bihar Saw Mills (Regulation) Rules, 1993 reads as under:

“4. Grant of licence- (i) The licensing officer shall grant the licence in Form C.

(2) The licence shall be subject to the following conditions:-

- (a) The sawing operations in the saw mill and saw pit shall not be carried out after sunset and before sunrise.
- (b) The certified copies of the license granted under



sub-rule(1) shall be displayed at conspicuous place in the saw mill or saw pit.

(c) The Licensee shall maintain daily account of receipt of wood purchased, sawing and disposal in Form D.

(d) The monthly account of wood received for sawing only shall be maintained in Form E.

(e) The registers of accounts shall, if so required, be produced before the licensing officer or any other officer authorized by him for inspection.

(f) If the licensee or the person incharge of the operation of saw mill or saw pit has reason to believe that the wood brought to the saw mill or the saw pit is illicit, he shall inform the nearest Range officer of Forests as early as possible, about the arrival of illicit wood. In no case, the illicit wood, shall be sawn.

(g) The expansion of the saw mill or saw pit or change in its location shall not be carried out without the written permission of the licensing officer.”

Section 3 of the Bihar Saw Mill (Regulations) Rules 1993

reads as under:

“3. Application for licence- (1) Any person to obtain licence under Section 5 to establish a saw mill or saw pit or such saw mill or saw pit which is in existence on the appointed day may make an application to the licensing authority.

(2) The application to establish saw mill or saw pit shall be in Form “A” and the application to operate saw mill or saw pit which is in existence on the appointed day shall be in Form “B”. Such application form may be obtained from the office of the concerned licensing officer.

(3) A non-refundable fee of rupees one thousand or rupees one hundred respectively shall be paid for each application of licence for saw mill or saw pit. The amount shall be payable to the account of such



Divisional Forest Officer, where saw mill or saw pit is in operation from before or proposed to be established. Separate application for each saw mill or saw pit is required.”

In the instant application, it is admitted case of both the parties that original licence no. 19 of 1997 was issued in the joint name of the petitioner and his brother, namely, Md. Raun. In the year 1998, license No. 19/97 was renewed due to partition between the brothers on account of land dispute. The then Licensing Authority- cum- Divisional Forest Officer, Gaya Circle issued new licence in the name of petitioner bearing licence No. 19A/97 and license no. 19/97 was issued in the name of Md. Raun.

In order to obtain licence for saw mill, a person has to submit the application in prescribed format along with application fee and security deposit as per Rule 3 of the Bihar Saw Mills (Regulation) Rules. There is no any document on record produced by the petitioner to show that he has ever applied for obtaining fresh licence in his name in terms of Rule 3 of the Bihar Saw Mills (Regulation) Rules and he was granted licence in Form-C in terms of Section 4 of the Bihar Saw Mills (Regulation) Rules.

The select list for Jehanabad was prepared and communicated by the Principal Chief Conservator of Forest



vide office Memo No. 3/ARA Mill-02/04-2368, dated 25.5.2004 in which the petitioner was given seniority at sl. no.2 and Md. Raun was given seniority at Sl. No. 16. The objection was made before the Principal Chief Conservator of Forest, Bihar, Patna by Md. Raun against the selection list and the Principal Chief Conservator of Forest directed for thorough enquiry by the Forest Conservator Gaya. The Forest, Conservator Gaya made thorough enquiry by giving proper opportunity of hearing to the petitioner as well as Md. Raun, and after looking into all the details and documents filed by the parties, came to the finding that Md. Raun is the owner of saw mill on the basis of Licence No. 19/97, which was validly issued by the Licensing Authority. The licence No. 19A/97 issued in the name of Md. Manjur (petitioner), later on, was found wrong and was issued in violation of the Bihar Saw Mills (Regulation) Act as well as the Bihar Saw Mills (Regulation) Rules, and as such, the enquiring authority recommended for cancellation of the licence. The detailed enquiry report submitted by the Conservator of Forest, Gaya has been enclosed as Annexure B to the counter affidavit.

The licence of the petitioner was, accordingly, cancelled by the Licensing Authority (respondent no. 5) by order dated



19.1.2011, as contained in Annexure- A to the counter affidavit, which was affirmed by the appellate authority in appeal no. 1 of 2011 by order dated 10.9.2012 as contained in Annexure-1 to the writ application.

There is no provision under the Bihar Saw Mills (Regulation) Act that after partition in the family among the brothers the original licence will also be divided in two parts as per share of the co-sharer.

In accordance with the Bihar Saw Mills (Regulation) Act and Bihar Saw Mills (Regulation) Rules, for establishment of saw mill, licence is required to be obtained from the licensing authority in terms of section 5 of the Act. For obtaining license the application form along with security deposit is to be submitted by the applicant as prescribed by Rule 3 of the Bihar Saw Mills (Regulation) Rules. From the enquiry report, as contained in Annexure- B to the counter affidavit, it is found that document submitted in the name of Md. Raun was forged and fabricated. The writ petitioner never applied for new licence in prescribed form, as per the Bihar Saw Mills (Regulation) Act and Bihar Saw Mills (Regulation) Rules. The license allegedly issued by dividing the old licence was in violation of the Act.

According to Section 7(5)(a) of the Bihar Saw Mills



(Regulation) Act and Resolution No. 2675 dated 30.08.2010 Point No. (vii)(kha) of the State Government, the licence was non-transferable and the license issued on the basis of the ownership transfer is treated as cancelled. Rule 3(4)(ii) of the Bihar Saw Mills (Regulation) Rules prescribes that no person shall be permitted to file an application on behalf of any person or company until he encloses executed copy of the Power of Attorney authorising him to work on behalf of such person or company and produces its original or the certificate of registration of such company of which he claims to be a partner before the licensing authority.

The petitioner has not submitted any application form as well as application fee to get new licence in his name. During enquiry, it was found that documents submitted in the name of Md. Raun was forged and fabricated. The writ petitioner has never applied for new licence in his name in prescribed form as per law and the Rules. The alleged licence issued in the name of petitioner vide licence no. 19A/97 by dividing the original licence No. 19/97 was in violation of the Bihar Saw Mills (Regulation) Act.

The original license no. 19/1997 issued in the name of Md. Raun was found to be valid and genuine by the



Conservator of Forest during enquiry and licence issued in the name of petitioner vide license no. 19A/97 was found to be wrong and issued in violation of the Bihar Saw Mills (Regulation) Act and Bihar Saw Mills (Regulation) Rules.

The appellate authority, in its order, as contained in Annexure-1, considered the case of the petitioner as well as Md. Raun in detail and after looking into the relevant document and hearing the parties has upheld the order passed by the Licensing Authority by which the licence no. 19A/1997 issued in the name of petitioner was cancelled.

Therefore, this Court does not find any illegality in the impugned order as contained in Annexure-1 passed by the Conservator for Forest, Gaya Circle, Gaya.

Accordingly, this writ petition is hereby dismissed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	2.4.2019
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