

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1185 of 2018

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Ashok Kumar Sharma Son of Late Jagdish Prasad Sharma, Resident of
Village-Hasanganj, Police Station Kashim Bazar, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Forest and Environment, Govt. of Bihar, Patna.
2. The Principal Chief Conservator of Forest, Bihar, Patna.
3. The Conservator of Forest, Patna Forest Division-Cum-Member Saw Mill Selection Committee, Munger.
4. The Divisional Forest Officer, Munger-Cum-The Member secretary, Saw Mill Selection Committee, Munger
5. The Divisional Commissioner Munger-Cum-The Member Secretary, Saw Mill Selection Committee, Munger.
6. The Range Officer, Munger Division, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan
For the Respondent/s	:	Mr.Raghwanand -Ga11
		Mr. Rajan, AC to G.A.-11

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 17-05-2019

Heard the learned counsel for the petitioner and the
State.

The instant writ petition has been preferred for issuance
of an appropriate writ/order/direction in the nature of certiorari to
quash the decision dated 19.10.2010 (Annexure-11) of the three
members District Level Selection Committee chaired by the
Commissioner, Munger, whereby the committee has rejected the
claim of petitioner for grant of licence of Saw Mill, which order is



perverse and unsustainable. The petitioner also assails the order dated 08.06.2001 (Annexure-5) passed by the D.F.O., Munger cancelling the licence of saw mill of petitioner and subsequent order dated 22.08.2009 (Annexure-10) passed by the D.F.O., Munger. The petitioner further prays for a writ of mandamus commanding the respondent authorities to issue the licence to the saw mill of petitioner.

Learned counsel for the petitioner has submitted that petitioner has filed C.W.J.C. No. 1797 of 2004 challenging the order of the Divisional Forest Officer vide order no. 96 dated 08.06.2001 by which licence of the petitioner was cancelled. Aforesaid original order was never communicated to the petitioner with letter no. 3357 dated 06.11.2001. Thereafter the petitioner being aggrieved by aforesaid order dated 08.06.2001 filed appeal before the appellate authority vide Appeal No. 11 of 2001, as contained in Annexure-6, which was rejected on the ground that licence of the saw mill of petitioner cannot be renewed after 12.12.1996. In terms of order of the Hon'ble Supreme Court passed in WP (C) No. 202 of 1995 there is ban on the registration of new saw mill after 12.12.1996.

Learned counsel for the petitioner has submitted that order of cancellation of licence of the petitioner was passed



without giving any notice. He has challenged the aforesaid order of cancellation before the appellate authority on the ground that same has been cancelled without notice. The appellate authority gave reason for cancellation of the licence of saw mill of petitioner that petitioner was not having licence prior to 12.12.1996.

Learned counsel for the petitioner has challenged the aforesaid order of appellate authority dated 22.10.2003, as contained in Annexure-6, before this Hon'ble Court vide C.W.J.C. No. 1797 of 2004 (contained in Annexure-9), in which Supplementary Counter Affidavit was filed on behalf of respondents pursuant to the order passed by the Hon'ble Court dated 14.05.2007. Aforesaid Supplementary Counter Affidavit filed on behalf of respondents is annexed as Annexure-8, wherein it is admitted in para 3 that petitioner was granted licence to run a Saw Mill. The licence of petitioner was renewed in January, 1996 and it was again renewed for the year, 1999. Aforesaid C.W.J.C. No. 1797 of 2004 was dismissed on 11.03.2008 with the limited indulgence to the petitioner that if the law so permits he can assail the order dated 08.06.2001 before the competent authority.

Thereafter petitioner in pursuance of aforesaid order dated 11.03.2008 passed in C.W.J.C. No. 1797 of 2004 filed petition before the District Forest Officer, Munger for rescinding



the order of cancellation dated 08.06.2001, which was dismissed by order dated 22.08.2009, as contained in Annexure-10 by the District Forest Officer, Munger on the ground that as per order of the Hon'ble Supreme Court passed in W.P. (C) No. 202 of 1995, there is ban on registration of saw mill after 12.12.1996, therefore the licensing authority was incompetent to issue licence after 1997.

Learned counsel for the State has submitted that licence of saw mill of petitioner cannot be renewed. The petitioner has approached three members District Level Selection Committee chaired by Commissioner, Munger for grant of licence of saw mill. The Committee rejected the claim of petitioner for grant of licence of saw mill vide Resolution No. 76 of 2007 dated 19.10.2010, as contained in Annexure-11, on two grounds i.e. (1) petitioner has not complied the conditions (i) and (ii) of the Resolution of Environment and Forest Department, (2) licence of petitioner has been cancelled on 08.06.2001 by the Licensing Authority. The articles of saw mill of petitioner have been confiscated in Confiscation Case No. 05 of 2004.

Learned counsel for the petitioner has submitted that none of the authority has taken into consideration the case of the petitioner that he was granted provisional licence on 23.03.1996, which was valid up to 31.12.1996, which is annexed as Annexure-



1 series. It is submitted that licence of saw mill of petitioner was further renewed till 31.12.1998. The petitioner after issuance of licence was required to deposit Rs. 1,000/- as licence fee but inadvertently the same was not deposited then the Department levied penalty of Rs. 10,000/- for default in payment. Accordingly petitioner paid the requisite amount of Rs. 1,000/- on 04.12.1997 along with penalty assessed as fee. Copy of cash deposit, dated 04.12.1997, as fee and penalty is annexed as Annexure-2.

Learned counsel for the petitioner has submitted that licence of the petitioner was granted by the competent authority vide letter no. 840 dated 10.04.1996 as prescribed under the Act. Copy of licence issued by the Industries Department is annexed as Annexure-3. Subsequently petitioner deposited a demand draft of Rs. 1,000/- each for renewal of licence for the financial year 1997, 1998 and 1999. Accordingly, department issued the licence. Petitioner again applied for renewal of licence on 12.10.2001 but the same was refused on the ground that provisional licence was cancelled by order no. 96 dated 08.06.2001. The original order 96 dated 08.06.2001 was never communicated/enclosed with letter no. 3357 dated 06.11.2001.

The respondent authorities refused to assign any reason for the aforesaid cancellation nor the petitioner was afforded



opportunity to show cause to rebut the ground which persuaded the authorities to cancel the licence vide order dated 08.06.2001. The aforesaid order was violative of principle of natural justice as the petitioner was never given opportunity to place his case before the authority.

The aforesaid order was challenged by the petitioner by filing a statutory appeal before the Conservator of Forest, Bhagalpur, vide Appeal No. 11 of 2001, which was dismissed by order dated 16.10.2003 in mechanical manner.

It is further submitted that the order passed by the authorities are nullity and *non est* because licence to the petitioner was issued on 01.01.1996. A right has accrued in favour of petitioner as he had a valid licence prior to 12.12.1996. Therefore, prior to cancellation of his licence, petitioner was entitled to be given opportunity of hearing before passing the order of cancellation. The petitioner assailed the original order of cancellation as well as the order dated 16.10.2003 passed in Appeal No. 11 of 2001 by preferring C.W.J.C. No. 1797 of 2004.

Pursuant to the order dated 14.05.2007 passed by this Hon'ble Court in C.W.J.C. No. 1797 of 2004, the Forest Department filed Supplementary Counter Affidavit sworn by Mr. Manoj Kumar Singh, D.F.O., Munger (Annexure-8) wherein in



para 3 of the Supplementary Counter Affidavit it was stated that licence was issued to the petitioner in the year 1996. The department for the first time brought on record in that Supplementary Counter Affidavit Order No. 96 dated 08.06.2001, by which licence of petitioner was cancelled.

The petitioner in compliance of order passed in C.W.J.C. No. 1797 of 2004 again filed an application for rescinding the order of cancellation dated 08.06.2001 before District Forest Officer, Munger. The petitioner also stated that licence was issued in the year 1996 and the ground for cancellation of licence that it was issued after 1997 is contrary to their own affidavit filed before the Hon'ble Court. The District Forest Officer again passed order dated 22.08.2009 holding that since licence was issued after 1997 the licensing authority was incompetent to grant licence in view of the judgment of Hon'ble Supreme Court passed in W.P. (C) No. 202/1995. On the direction of Hon'ble Supreme Court the State Government constituted a three member committee at the District Level headed by Commissioner for grant of licence of saw mill. The committee rejected the claim for grant of licence of saw mill on the ground that licence of saw mill granted to petitioner was cancelled by Munger Division Office vide Office Order No. 96



dated 08.06.2001. Confiscation Proceeding No. 5/2004 has been initiated and articles have been confiscated.

This Court finds that neither the appellate authority nor the three member committee at the District Level have considered the case of petitioner that petitioner was granted licence on 01.01.1996. The licence of petitioner was renewed from time to time. The Forest Department has admitted in the Counter Affidavit that petitioner was provided licence in January, 1996. Initial order dated 08.06.2001 was passed cancelling the licence of the petitioner without hearing the petitioner. Aforesaid order as contained in Annexure-5 shows that no notice was ever served to the petitioner. Petitioner was not heard before passing the impugned order. It further appears that appellate authority also without considering the case of petitioner affirmed the order passed by the licensing authority dated 08.06.2001 with reason that no new licence can be issued after 12.12.1996 in terms of order of Hon'ble Supreme Court passed in W.P. (C) No. 202/1995.

This Court is of the view that concerned authorities have not applied their mind on the submissions of the petitioner and looked into the relevant documents produced by the petitioner to show that petitioner was having licence since year 1996, which was renewed from time to time. There was no consideration by the



licensing authority (District Forest Officer) as well as the appellate authority about the aforesaid facts in favour of petitioner.

Therefore the orders as contained in Annexures-5, 6 and 10 suffers from illegality. Accordingly, the same are hereby set aside.

Petitioner is directed to file fresh representation before the District Forest Officer with all the relevant documents along with order of this Court for renewal of his licence which already existed in his favour since 1996.

The District Forest Officer shall pass appropriate order in accordance with law after giving proper opportunity of hearing to petitioner and looking into all the relevant documents within a period of two months from the date of filing of such representation by the petitioner. The District Forest Officer shall pass speaking order in the matter.

The instant writ petition is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27.05.2019
Transmission Date	

