

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13711 of 2016

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M/s Green Timber at Kalyanpur, East Champaran, through Proprietor Nurul Hodda, son of late Abdul Hodda R/o Village PO PS - Kalyanpur, District - East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Chief Conservator of the Forest, Bihar, Patna.
3. The Regional Conservator of the Forest, Muzaffarpur.
4. The Commissioner, Tirhut Division, Muzaffarpur, District Muzaffarpur.
5. The Conservator of Forest, Siwan, Dist - Siwan.
6. The Divisional Forest Officer, Motihari, Forest Division cum Licensing Officer, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Pandey, Advocate. Mr. Rishikesh Ojha, Advocate.
For the State	:	Mr. Raj Kishore Roy, G.P.-18.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 13-02-2019

1. Heard Mr. Jitendra Kumar Pandey, learned counsel for the petitioner and Mr. Raj Kishore Roy, G.P.-18, counsel appearing on behalf of the State.

2. Petitioner has challenged the order as contained in Annexure-8 of the writ petition by which renewal of license of the petitioner has been suspended.

3. Counsel for the petitioner submits that original licence was in the name of Shri Abdul Hamid, father of the petitioner, who died on 2.7.2007. After death of his father, name of this petitioner was substituted and licence was renewed in his name by order of the District Forest Officer, as contained in



Annexure-3 to the writ petition. Thereafter, the license of the petitioner was renewed by order dated 20.6.2008 by Office Order No. 52. The license of the petitioner was regularly renewed in his name till 2016. Counsel for the petitioner further submits that renewal of license of the petitioner for the year 2016 has been suspended by the Divisional Forest Officer, Motihari, vide Annexure-8 saying that necessary guidelines has been sought for by the District Forest Officer.

4. Counter affidavit has been filed on behalf of the State wherein it is mentioned that original license was issued in the name of Abdul Hamid (father of the petitioner) under Bihar Saw Mills (Regulation) Act, 1990 by the licensing Officer-cum-Project Divisional Manager, Bettiah. The said licence was renewed as Licence No. 352/99 for the year 1999 by the Licensing Officer-cum-Divisional Forest Officer, Muzaffarpur, after the area in which the Saw Mill is situated, was transferred to Tirhut Forest Division, Muzaffarpur. Counsel for the State further submits that by letter dated 23.2.2008 Mahrin Nesha, wife of late Abdul Hamid informed that her husband has expired on 28.2.2007. She requested for transfer of license No. 352/99 in the name of her son Nurul Hoda (petitioner.)



5. It is mentioned in paragraph-6 of the counter affidavit that there is provision that if the licensee has parted, in whole or in part with his control over the Saw Mill or has ceased to operate or own such mill, then licence of the petitioner is liable to be revoked after giving him an opportunity to file show cause.

6. The State Government by resolution No. 2675 dated 30.8.2010 has in accordance with the orders passed by Hon'ble Supreme Court in WP (C) No. 202 of 1995, laid down guidelines for publication of seniority lists of Saw Mills. In paragraph-3 (1) (vii) (ka) of said resolution, decision has been taken to include the Saw Mills whose licence has been transferred in cases of inheritance. Copy of aforesaid resolution has been enclosed as Annexure-9.

7. It is mentioned in paragraph-8 of the counter affidavit that by Office Order No. 52 dated 20.6.2008 of Divisional Forest Officer, Motihari, Forest Division, decision was taken to include name of Nurul Hoda in place of late Abdul Hamid in the licence No. 352 of 1999. A copy of order dated 20.6.2008 has been enclosed as Annexure-3 of this writ petition. In accordance with the said decision, the license was renewed in the year 2008 in name of Nurul Hoda and thereafter licence has been renewed in his name.



8. It is mentioned in paragraph-9 of the counter affidavit that in accordance with the resolution dated 30.8.2010 contained in Annexure-9 of this writ petition, a seniority list of Saw Mills of Motihari District has been published by order No. 35 dated 20.9.2012 of Principal Chief Conservator of Forests, Bihar. In the said seniority list, the Saw Mill with licence No. 352/99 has been placed at Sl. No. 28 and name of owner of said Mill has been mentioned as Abdul Hamid and not Nurul Hoda. Photocopy of aforesaid order dated 20.9.2012 has been enclosed as Annexure-A.

9. It is further submitted in paragraph-10 of the counter affidavit that Hon'ble Supreme Court by order dated 29.10.2002 passed in WP(C) No. 202 of 1995 has directed that new licence shall be issued for any Saw Mill, Veneer Mill and ply wood Industries only after approval of Central Empowered Committee, New Delhi. Any change in name of owners in a licence shall result into issuance of a new license. As such, by letter No. 682 dated 20.2.2013 of Environment and Forest Department, Government of Bihar, Central Empowered Committee was requested to communicate its decision on the point that whether on death of a licensee, the license can be renewed in the name of his successor or not. The photocopy of letter dated



20.2.2013 has been enclosed as Annexure-B to the counter affidavit.

10. It is admitted in paragraph-11 of the counter affidavit that change has taken place in the licence in name of Nurul Hoda for the year 2016 by Memo No. 618 dated 13.4.2016. But taking into consideration that change in name of licence from the name entered into the original licence results into issuance of a new licence the opinion of senior officials has been sought for in this regard the said renewal has been kept under suspension till further orders by letter No. 893 dated 30.5.2016 by Divisional Forest Officer, Motihari. A copy of aforesaid letter has been enclosed as Annexure-8 of the writ petition. The decision taken by said letter has been challenged in this writ petition.

11. It is mentioned in paragraph-12 of the counter affidavit that Ministry of Environment, Forest and Climate Change, Government of India, in compliance with the order passed by Hon'ble Supreme Court on 5.10.2015 in WP (C) No. 202 of 1995 has issued the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 and in paragraph 8 (i) of the said Guidelines, provision has been made that no licence shall be granted or renewed to a wood based industry without obtaining prior approval of the State Level Committee under the



chairmanship of Principal Chief Conservator of Forests of the State. By resolution issued on 11.9.2017 an amendment has been made in the said provision by Government of India under which the State Level Committee has been given liberty to delegate the power of renewal of license to the Divisional Forest Officer of the concerned Divisions. Hence, in accordance with order passed by Hon'ble Supreme Court on 5.10.2015 in WP (C)No. 202 of 1995 and guidelines issued by Government of India, now the licence can be renewed in the name of successors on death of the original owner of licence after obtaining approval of State Level Committee constituted under Principal Chief Conservator of Forests, Bihar.

12. From perusal of contents of counter affidavit filed on behalf of respondent No. 6 and submission of petitioner, this Court finds that resolution No. 2675 issued on 30.8.2010 will not apply in the case of petitioner. The State has admitted in counter affidavit that petitioner got the licence transferred in his name after death of his father by Annexure-3. Thereafter, the licence has been renewed till 2016 in his name. Therefore, at the time when the seniority list was prepared as per aforesaid resolution in the year 2012, the name appearing on the licence No. 352/99 was of petitioner and not of his father.



13. Therefore, the department has committed illegality in considering licence to be in the name of father of petitioner whereas according to Annexure-3, licence has already been issued after death of father of the petitioner in the name of petitioner in the year 2008 (Annexure-3) and renewed subsequently in various years.

14. Therefore, this Court finds no justification on the part of the authority (respondent No. 6) to suspend the licence of the petitioner vide Annexure-8 till the guidelines are received from the higher authority. Therefore, Memo No. 893 dated 30.5.2016 issued by the Divisional Forest Officer, Motihari Division (Annexure-8), is hereby quashed.

15. This writ petition, is accordingly, allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26/02/2018
Transmission Date	

