IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4344 of 2015

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Girdhari Lal Madhogarhia, Son of Sri Nand Lal Madhogarhia, C/o M/S Saharsh Plywood Industries, Ganpatganj, Supaul, District - Supaul

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Forest, Patna
2. The Principal Chief Conservator of Forest, Bihar, Patna
3. The Licensing Authority - cum - Divisional Forest officer, Saharsa Forest Division, Saharsa

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Advocate.
Mr. Pranav Kumar Jha, Advocate.
Mr. Bal Krishna Mishra, Advocate.

For the Respondent/s : Mr. Sunil Kumar, A.C. to G.P. 11

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 04-01-2019

1. Heard Mr. Subodh Kumar Jha, learned counsel for the petitioner and Mr. Sunil Kumar, A.C. to G.P. 11.

2. Petitioner has preferred this writ application against the order dated 7.1.2015 passed by respondent No. 2, the Chief Principal Conservator of Forest, Bihar, Patna, by which the application filed by petitioner for inclusion of his Veneer Mill in the seniority list so prepared by the respondent authority has been rejected and name of petitioner Veneer Mill has not been included in the list so prepared on 22.7.2013. The licence granted in favour of petitioner since 1993 is under stake contrary to the facts and law and further for a direction upon the respondents to add name of petitioner in the list so prepared by the department dated 22.7.2013 considering the facts that in all the five lists prepared earlier, the name of petitioner finds figure and the petitioner had already deposited challan for renewal of his licence before the respondent No. 3, Divisional Forest Officer.

3. Counsel for the State has submitted that in terms of order passed by the Hon'ble Supreme Court in WP (C) No. 202 of 1995, fresh seniority list of the Veneer Mill was prepared. The name of Veneer Mill of the petitioner was not included because it was found to be established after 29.10.2002, which was cut off date fixed by the Hon'ble Supreme Court in the aforesaid order.

4. The petitioner has challenged the impugned order dated 7.1.2015 contained in Annexure-6, by which, he has been communicated that his name has not been included in the revised seniority list prepared on 22.7.2013 in compliance of direction of Hon'ble Supreme Court passed in WP(C) No. 202 of 1995 dated 29.10.2002 because the date of establishment of Veneer Mill of petitioner was determined to be 3.2.2003.

5. Counsel for the petitioner submits that aforesaid letter has been issued by the department in arbitrary manner without following any procedure of law and also with mala fide. He further submits that Veneer Mill of the petitioner was functioning since 1994 having licence No. 43S of 1994 which will be apparent from Annexure-1. Thereafter, in subsequent seniority list prepared on 23.9.2010 (Annexure-2), the name of Veneer Mill of the petitioner finds mentioned at Sl. No. 149. Thereafter, final seniority list of Veneer Mill has been prepared on 10.01.2013 (Annexure-4) wherein the name of Veneer Mill of petitioner has been mentioned at Sl. No. 255. The department has informed the petitioner by Annexure-6 that in view of order of Hon'ble Supreme Court, the cut off date of establishment of Veneer Mill was 29.10.2002 and date of establishment of Veneer Mill of petitioner was determined to be 3.2.2003. Therefore, name of Veneer Mill of petitioner has not been included in the final seniority list dated 22.7.2013 as contained in Annexure-12.

6. From perusal of earlier seniority list dated 10.01.2013 it is apparent that same was prepared by the department after taking into consideration the direction of the Hon'ble Supreme Court. The revised list has been prepared by the department on 22.7.2013 on the basis of objection received by several persons and after hearing those persons, name of the petitioner Veneer Mill has not been included.

7. Two counter affidavits have been filed on behalf of the Forest Department. In 1st counter affidavit filed on behalf of the Department (respondent No. 3) dated 30.6.2015, it has been stated in paragraph-11 that Veneer Mill of the petitioner was established on 3.2.2003 in Ganpatganj (Supaul) after cut off date i.e. 29.10.2002. Therefore, the Veneer Mill of the petitioner was kept out of the final seniority list of Veneer Mill published on 22.7.2013 as per direction issued by the Hon'ble Supreme Court. The second counter affidavit has been filed on behalf of the department and that was sworn by respondent No. 2 dated 3.11.2015 wherein it is mentioned in paragraph-6 that various relevant information was taken into consideration for preparing of inter se seniority list which has been mentioned in paragraph-6 (a) to (h). It is mentioned in paragraph-6 (C) that one of the conditions for determining inter se seniority was "date on which the sales tax registration was obtained". In the same counter affidavit sworn by respondent No. 2 it is mentioned in paragraph-17 that petitioner had appeared for hearing before the Empowerment Committee on 20.12.2012 and from papers produced by him it was evident that his unit was registered for sales tax on 1.5.2001 and first payment of sales tax was made on 3.2.2003. On the basis of date of first payment of sales tax, the date of establishment of unit of petitioner was fixed as on 3.2.2003 and on the basis of said date of establishment, name of unit of petitioner was placed at Sl. No. 255 in seniority list as contained in Annexure-5 of the writ petition.

8. As such, such statement made by the respondent No. 3 in counter affidavit, shows arbitrary action of the department in preparing the seniority list and determining the date of establishment of Veneer Mill of the petitioner to be 3.2.2003.

9. The deponent has mentioned in paragraph-17 of counter affidavit sworn on 3.11.2015 that unit of petitioner was registered for sales tax on 1.5.2001. It further appears from earlier seniority list prepared for Veneer Mills (Annexure 1 and 2) that name of petitioner was appearing and year of registration of unit of petitioner was mentioned as 1994 having licence No. 43S of 1994 (Annexure-1). The name of Veneer Mill of petitioner also finds mentioned in the final seniority list prepared on 10.1.2013 (Annexure-4) after taking into consideration direction of Hon'ble Supreme Court. It would appear that name of Veneer Mill of petitioner has been excluded from gradation list dated 22.7.2013 (Annexure-12).

10. The petitioner filed representation for not including his name in the final gradation list dated 22.7.2013 which was rejected by the department on 7.1.2015, copy of which, has been enclosed as Annexure-6.

11. It would appear from Annexure-6, that name of Veneer Mill of petitioner has been excluded from gradation list dated 22.7.2013, because date of establishment of his Mill was found to be 3.2.2003.

12. From the statement made by the respondent in the counter affidavit dated 30.6.2015 and 3.11.2015 as mentioned above and also on perusal of Annexure-1, 2, 3 and 4, in which the name of Veneer Mill of petitioner existed showing the date of establishment of Veneer Mill of the petitioner in the year 1994, this Court finds that action of respondent in not including the name of Veneer Mill of petitioner in gradation list dated 22.7.2013, is arbitrary and not in accordance with law.

13. The deponent has submitted in paragraph-17 of counter affidavit dated 30.11.2015 that after verification of all papers produced by the petitioner it was evident that unit was registered for sales tax on 1.5.2001. As such, the Veneer Mill of petitioner was in existence prior to cut off date fixed by the Hon'ble Supreme Court i.e. 29.10.2002.

14. Therefore, Annexure-6 issued by the department excluding the name of Veneer Mill of petitioner in final seniority list published on 22.7.2013 is totally arbitrary and illegal, and the same is hereby set aside.

15. The department will consider to include the name of petitioner Veneer Mill in the seniority list dated 22.7.2013 after looking into observation of this Court made above and shall pass appropriate order in accordance with law within a period of three months from the date of receipt of this order.

16. This writ application is accordingly allowed with aforesaid direction.

S.Ali/- **(Sanjay Priya, J)**

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10/01/2019
Transmission Date	