

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19538 of 2015

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Ateek Ahamad Son of Late Mohammad Ahmad Sahab R/o Nasirganj Nista,
Police Station Singhwara, District - Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary Environment and Forest Department, Govt. of Bihar Patna.
2. The Principal Chief Conservator of Forest, Bihar 4th Floor, Technology Bhawan, Bailey Road, Patna
3. The Appellate Authority - Cum - Conservator of Forest, Muzaffarpur Circle, Muzaffarpur
4. The Licensing Officer - Cum - Divisional Forest, Mithila Forest Division, Darbhanga
5. Shambhu Shankar Gupta S/o Late Kapli Shankar Gupta R/o village - Bharwara, Police Station Singhwara, District - Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagnnath Singh with Mr. Pushkar Kr. Roy, Advocates
For the State	:	Mr. Manoj Kumar AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the petitioner and State.

This petition has been filed by the petitioner for issuance of a writ in the nature of *certiorari* or any other appropriate writ/rule/direction for quashing the order no. 069 dated 14.9.2015 passed by the Licensing Officer-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga, directing the renewal of saw mill license of private respondent no.5 in anticipation to any application filed by him for renewal of license as also in contravention to the provision of Section 5 and 7(5) of Bihar Saw Mills (Regulation) Act, 1990 as also Rule



3(6)(2) of Bihar Saw Mills (Regulation) Rules, 1993 and the circular issued by Environment and Forest Department bearing No. 76/2007-2675 dated 30.08.2010 (Annexure-12) in most illegal and arbitrary manner and also any other appropriate relief/reliefs in the facts and circumstances of the present case.

Learned counsel for petitioner submits that petitioner is holder of Saw Mill license bearing License no. 1512 dated 2.7.1994 and has been continuing as such with license since 1994 and his right to business is being affected by private respondent no.5 adopting all sorts of illegal activity. Hence, he is affected party.

It is mentioned in the writ petition that one Md. Shahid Hussain, son of late Jahid Hussain R/o village Malmal District Madhubani got a Saw Mill License bearing License no. 1764 dated 30.8.1994 which was renewed up-to 31.12.2001 for the year 2001. The photo copy of the license no. 1764 dated 30.8.1994 has been annexed as Annexure -2 to the writ petition. It is further stated that one Shambhu Sah S/o late Kapli Sah R/o vill. Panshala P.S. Singhwara District Darbhanga was caught red handed while running a Saw Mill without license and, therefore a prosecution was launched against him by Regional forest Officer, Darbhanga for the offence U/s 41,42 and 52 of the



Indian Forest Act, 1989 read with sections 5,7,8,9,10,11, 13 and 14 of Bihar Saw Mills (Regulation) Act, 1990 being Forest Case no 154 of 2001 dated 14.9.2001. The photo copy of the report submitted by the learned CJM, Darbhanga has been annexed as Annexure-3 series to this petition. It is further submitted that after institution of forest case against Shambhu Sah S/o late Kapli Sah R/o village Panshala, P.S. Singhwara District Darbhanga he changed his name as 'Shambhu Shankar Gupta' S/o late Kapli Shankar Gupta, as also his address as R/o Bhawara, P.S Singhwara, District Darbhanga and got an affidavit sworn before the Notary Public, Darbhanga by one Shahid Hussain, S/o Zahid Hussain the Proprietor of M/S Amir Timber for transfer of the name of the owner as Shambhu Shankar Gupta (respondent no.5) in license no. 1764 dated 13.8.1994 (Annexure-2). The photo copy of the affidavit is annexed as Annexure 4 to the writ petition. On the basis of such affidavit said Shambhu Shankar Gupta S/o Kapli Shankar Gupta got saw mill license no.1764 dated 3.8.1994 renewed in the name of M/s Amir Timber proprietor being Shambhu Shankar Gupta vide Saw Mill License no. 41 of 2002 dated 2.1.2002. The photo copy of the Saw Mill License no. 41 of 2002 dated 2.1.2002 has been annexed as Annexure-5 to the writ petition.



It has further been submitted that when the foul play played by the said Shambhu Shankar Gupta came to the notice of the Licensing Authority- cum -Divisional Forest Officer, Darbhanga (respondent No. 4), the Saw Mill license no. 41 of 2002 was cancelled by memo no. 556 dated 27.2.2003 because the same was in contravention to the mandatory provisions of the Bihar Saw Mills (Regulation) Act, 1990 and Bihar Saw Mills (Regulation) Rules, 1993. Respondent no.5 along with Md. Shahid Hussain, Proprietor of M/S Amir Timber, got license no 1764 dated 3.8.1994 (Annexure-2) renewed up-to 2010 in which the proprietor was Md. Shahid Hussain and Shri Shambhu Shankar Gupta. The private respondent no.5 was the partner of firm. The photo copy of the renewal of license for the year 2009-10 has been annexed as Annexure-7 to writ petition.

Again, in the year 2012 when Md. Shahid Hussain, proprietor of M/S Amir Timber, objected about putting his signature on any affidavit or Power of Attorney and when this dispute came to the notice of the Licensing officer about issuance of Saw Mill license no. 1764 dated 3.8.1994 and it is being renewed from time to time the same was cancelled being in contravention to the provisions of Sections 5 and 7(5) of the Bihar Saw Mills (Regulation) Act, 1990 vide order dated



15.3.2012 communicated through Memo no. 431 dated 16.3.2012 as contained in Annexure-8 to the writ petition.

Respondent no.5 again filed a petition on 30.11.2012 for renewal of his license of M/S Amir Timber, proprietor being Md. Shahid Hussain and he being the partner of the firm on 30.11.2012, but the same was rejected by letter no. 2427 dated 31.12.2012 issued by the licensing officer-cum-Divisional Forest Officer (respondent no.4) by order contained in Annexure-9. The proprietor of M/S Amir Timber, namely Md. Shaid Hussain and respondent no.5 being the partner of M/S Amir Timber filed an appeal against the order dated 15.3.2012 issued vide memo no. 431 dated 16.3.2012 (Annexure-8) passed by Licensing officer-cum Divisional Forest Officer, Mithila Forest Division, Darbhanga (respondent no.4) before the appellate authority-cum Conservator of Forest, Muzaffarpur, Circle Muzaffarpur (respondent no.3) being appeal no. 8 of 2012. The appellate authority- cum- conservator of forest after hearing the parties by order dated 9.12.2013 directed the licensing authority to review his order dated 15.3.2002 after remanding the matter back to the licensing officer-cum Divisional Forest Officer, Mithila Forest Division, Darbhanga after holding that license granted to respondent no.5 vide



License no. 1764 of 1994 had ceased to exist in the year 2002 itself, it could not be revoked in the year 2012, and as such, the impugned order is infructuous. Moreover, any act done by the licensing officer from 13.9.2002 on wards and in reference to license no. 1764 of 1994 will also be infructuous. Aforesaid order is contained in Annexure 10 to the writ petition. Thereafter, on receipt of the order dated 9.12.2013, the licensing authority (respondent no.4) has passed the impugned order as contained in Annexure-11.

A counter affidavit has been filed on behalf of the respondent no.2, wherein, it has been stated that licensing authority vide Annexure-11 neither renewed the license nor issued any license in favour of the respondent no.5. Learned counsel further points out that in last portion of the direction as contained in Annexure-11, the respondent no.5 was allowed to apply for renewal of license to get necessary permission to run the Saw Mill. He has further submitted that from the order contained in Annexure-11 it will be apparent that no order of renewal of the license was passed.

The Forest Department has further submitted in the counter affidavit in para 5 that petitioner in the instant case is not affected by the order which is under challenge in this writ



application nor this writ has been filed for orders in the larger public interest. Therefore, this writ petition is not maintainable. The petitioner has been placed above respondent no.5 in the seniority list of Saw Mills of Darbhanga District and, therefore, there should be no reasons for petitioner having been aggrieved from the order of renewal of license of respondent no.5 as contained in Annexure-11.

This Court, after hearing both the parties and looking into the entire facts of the case, as mentioned above, finds that petitioner is running his Saw Mill on the basis of License issued to him vide license no. 1512 dated 2.7.1994 and is continuing his business on the basis of aforesaid license.

The conduct of the respondent in granting license to respondent no.5 has been challenged. The criminal case was also filed for having changed the name from 'Shambhu Sah' to 'Shambhu Shankar Gupta' and got the license issued as partner of M/S Amir Timber by getting an affidavit sworn by one Shahid Hussain, the proprietor of M/s Amir Timber. Said Shahid Hussain later on appeared before the authority and submitted that he has not given any such affidavit.

Learned counsel for petitioner submits that he has brought to the notice of this Hon'ble Court about the illegal action



committed by the respondents by passing the order as contained in Annexure-11 to writ petition to pass favourable order in favour of respondent no.5.

This Court, after looking into entire facts of the case finds that as per Section 7(5) of the Bihar Saw Mills (Regulation) Act, 1990 the license is liable to be cancelled if any licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill or saw pit.

In the instant case, from the entire facts it appears that respondent no.5 has got license in his favour as partner of M/s Amir Timber on the basis of the affidavit submitted by Shahid Hussain being the proprietor of M/S Amir Timber that he has parted with the ownership of the aforesaid Saw Mill. The aforesaid license was subsequently cancelled. The respondent no.5 filed appeal before the Appellate Authority and Appellate Authority, by order as contained in Annexure-10, remanded the matter before the Licensing Authority to consider the matter afresh after looking into all the provisions including the provisions as enumerated in Sections 5 and 7(5) of the Bihar Saw Mills (Regulation) Act, 1990 read with Sections 3(6)(2) of the Bihar Saw Mills (Regulation) Rules, 1993.



This Court finds that in the last portion of the order, as contained in Annexure-11, it is mentioned that respondent no.5 may apply for renewal of the license for running his Saw Mill. It is also observed in paragraph no. 9 of the impugned order as contained in Annexure-11, that license can be granted to respondent no.5 after considering him the proprietor of the aforesaid Saw Mill. He was directed to apply for license to run the Saw Mill at whatever place he likes.

This Court finds that aforesaid observation made by the Licensing Authority –cum Divisional Forest Officer, Mithila Forest Division, (respondent no.4) as contained in Annexure- 11 is illegal and not in accordance with law. Therefore, the aforesaid observation of the respondent no.4 in Annexure-11 is hereby set aside.

The writ application is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.02.2019
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