

**Ashok Kumar and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Feb-27-2002

**Judge :** R.S. Garg, J.

**Appeal No. :** C.W.J.C. Nos. 739, 1056, 10155, 10690, 10836, 11265, 11434, 11449, 11979, 13048, 13455 and 13604 of

**Appellant :** Ashok Kumar and ors.

**Respondent :** State of Bihar and ors.

**Judgement :**

**R.S. Garg, J.**

1. This order shall dispose of the following C.W.J.C. No. 10836 of 2001, C.W.J.C. No. 11979 of 2001, C.W.J.C. No. 739 of 2001, C.W.J.C. No. 1056 of 2001, C.W.J.C. No. 10155 of 2001, C.W.J.C. No. 10690 of 2001, C.W.J.C. No. 11265 of 2001, C.W.J.C. No. 11434 of 2001, C.W.J.C. No. 11449 of 2001, C.W.J.C. No. 13048 of 2001 and C.W.J.C. No. 13455 of 2001.

2. The grievance of the writ petitioners are (1) that their applications for grant of new licence have been rejected by the communication/order, which are bereft of the reasons (2) their licences of saw mill have been suspended (3) their applications for renewal of the licences have been turned unceremoniously. In some of the cases, it is also contended that applications for grant/renewal of the

licence have not been decided at all.

3. Learned Counsel for the State, Mr. V.N. Sinha, G.P, 9 and Mr. R.K. Dutta, S.C. 4 submit on the strength of a report of the committee that the State came to the conclusion that a particular number of the saw mills. Veneer or the factories should be allowed to work and, therefore, the concerned authorised authorities are not granting/renewing the licences. It is also contended that in view of the direction issued by the Supreme Court, the petitioners have no right of making an application for grant of renewal of licence in their favour. In C.W.J.C No. 1197 of 2001, it is contended that the petitioner without any authority or licence in his favour was operating the saw mill for more than three years, therefore, the authority concerned has proposed to reject his application.

4. I have heard the parties at length.

5. A Division Bench of this Court in the matter of Basudeo Yadav v. State of Bihar Ors. L.P.A. No. 1458 of 2000, decided on 10-1-2002 has observed that:

Thought, thus, it is not possible for this Court to interfere in the matter I am not able to appreciate as to how the State Government proposes to identify 1950 saw mills, or, one saw mill for population of 50,000, as the case may be. It is one thing to fix the number or the basis of the sustainable capacity of forests, but another thing to identify the sustainable saw mills which are to be allowed renewal. Considering that a large number of saw mills have been running under valid licences, which one of them should be allowed and which one should be closed within a span of three years would require due care and caution. Obviously, this cannot be done on a pick and choose basis, some norms have to be laid down. The communication dated 28-10-2000 lays down some norms which may not be sufficient. In any case, this exercise will take time. The question is how pending identification of such mills which are to be allowed to run, the existing mills are to be dealt with. In my opinion, while such of the mills the licence for which has already expired, may be allowed to die natural death, provided some of them are identified as viable/sustainable saw mills to be allowed to run, all the saw mills running under valid licence must be allowed to continue till expiry of the term of the licence. The question of their renewal will abide by the result of the identification

undertaken by concerned authorities of the State, as, indicated above. The State Government would do well to appoint committee of experts/officers to identify the saw mills.

6. From the said observations made by the Division Bench, it would clearly appear that some of the mills the licences of which have already expired might be allowed to die natural death, provided some of the mills are identified viable/sustainable saw mills to be allowed to run. Before rejecting an application for renewal of the licence or before suspending the existing licence, the said authorities/forest authorities/competent officers are required to go through the exercise of finding that a particular mill is viable/sustainable or not. The authorities are left with no discretion, in view of the judgment of the Division Bench to allow or reject the application for renewal of the licence at their own will or liking. Each case will have to be taken up separately, each application has to be heard and without recording a finding that the said/particular saw mill, etc. is not viable or sustainable, the application for grant or renewal cannot be rejected by cryptic or cavalier order simply saying that in accordance with the policy of the State Government licence cannot be granted or renewed. The same would be the procedure for such, saw mills the licence of which have been suspended.

7. So far as the question of grant of new licences are concerned, the authorities shall be free to take an action in accordance with law. However, they cannot be allowed to reject the application by non-speaking order. They have to give an opportunity of hearing to the applicant who proposes to establish a saw mill etc. then they have to record a finding that the licence for saw mill etc., can or cannot be granted, in any case a reasoned order is required to be passed.

8. Learned Counsel for the petitioners have placed their strong reliance upon a judgment of the Supreme Court in the matter of *Jawahar Lal Sharma and Anr. v. The Divisional Forest Officer, U.P. and Anr.* 2002 A.I.R.S.C.W. 414. Paragraph 5 of the said judgment is required to be quoted for the benefit of the parties:

It is not necessary for us to go into noticing further details of facts in view of the direction which we propose to make. It appears that a larger issue dealing with ecology, protection and conservation of forest (W.P. C) No. 202/1995. T.N.

and Ors. is pending in this Court wherein from time to time direction are being issued. Two such directions dated 12-12-1996 and 4-3-1997 are to be found reported as (1997) 2 SCC 267 and (1997) 3 SCC 312. On account of the Supreme Court of India being seized of the matter and monitoring the issue, there has been reluctance on the part of the Government officials to deal with saw mill licences and their renewals. In the cases before us, the renewal fees have been deposited by the appellants but orders of renewal are not passed. A vague plea is raised on behalf of the respondents that the applications for renewal were not in prescribed proforma. If that be so, the defect could have been pointed out to the applicant concerned and an appropriate application in the prescribed proforma could have been called for to be substituted in place of defective application, if any or such other particulars as may be necessary could have been called for. The relevant consideration for and the rights and obligations flowing from a prayer for renewal of a pre-existing licence are different rather substantially at variance from those for an application for the grant of a fresh licence. The teamed Counsel for the appellants submitted that an application for the grant of a fresh licence may not be entertainable at all though the appellants may be entitled to renewal subject to such directions, as the Supreme Court of India may be pleased to make. The orders made by the High Court do not, therefore, meet the ends of justice. Admittedly, the licence of any of the appellants has not been cancelled.

9. In paragraph 6 of the said judgment, the Supreme Court has observed that, 'no order or direction made by the Supreme Court of India to the effect that even existing licences shall not be renewed, was brought to the notice of the Supreme Court further observed that it is for the authorities to decide the matter at their level.

10. All these petitions are disposed of with the direction to the authorities concerned to decide the matter afresh in accordance with the direction given by the Division Bench in L.P.A. No. 1458 of 2000 and the observations made by the Supreme Court in the Matter of Jawahar Lal Sharma (Supra). The petitions are allowed to the extent indicated above.

11. The authorities shall decide the matter within 15 days from the date of production/submission of a copy of this order. The petitioners shall be free to make application to the concerned Divisional Forest Officer/Licencing authority to permit such petitioners to remove their goods in case the Divisional Forest Officer concerned is not granting or renewing the licences. A copy of this order be kept in the records of connected petitions.

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