(2019) 04 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2711, 2862 Of 2015

M/s Bhagwati Timber — APPELLANT

Vs

State Of Bihar And Ors — RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Water (Prevention And Control Of Pollution) Act, 1974 — Section 25, 26
Air (Prevention And Control Of Pollution) Act, 1981 — Section 21
Bihar Finance Act, 1981 — Section 3, 14
Factory Act, 1948 — Section 6(1)(d)
Central Sales Tax Act, 1956 — Section 7(1)(2)
Bihar Value Added Tax, 2005 — Section 5, 19
Bihar Saw Mills (Regulation) Act, 1990 — Section 2(g), 3(g), 9, 10
Environment (Protection) Rules, 1986 — Rule 4

Citation : (2019) 04 PAT CK 0010

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Purnendu Singh, Pronoti Singh, Kamlesh Kishore, A. K. Rastogi, Naman Nayak

Final Decision : Allowed

Judgement

1. Both the writ applications have been heard together and are disposed off by this common judgment as question involved in both the applications is same and similar.

2. Petitioners have filed instant writ application for quashing the final seniority list of Veneer Mills established as on 30.10.2002 or prior thereto issued from the office of the Additional Principal Chief Conservator of Forest cum Chief Wildlife Preservation Officer, Bihar, Patna, vide Office Order No.32 dated 22.07.2013, whereby and whereunder final seniority list of Veneer Mills has been published without following the procedures, standards guidelines as laid down by the Apex Court as well as for issuance of writ of mandamus directing the respondents to include the names of the Petitioners Veneer Mills/ Plywood Industries and

prepare a fresh seniority list of Veneer Mills after taking into account the standard guidelines set forth by the Central Empowered Committee/ Resolution of the State and also after adopting the fairness and transparency required in this regard.

3. The Petitioner of CWJC No.2862 of 2015 is Veneer Mill owned by sole proprietor, Sri Ramakant Sah, son of late Chandeshswar Sah, who is citizen of India. It has been submitted that Petitioner Veneer Mill is running since 10.08.1995. The sole proprietor, Ramakant Sah, entered into business of production of Veneer by establishing plant and machinery for its production in the year 1995 and got registration under Section 14 of the Bihar Finance Act as soon as his liability to pay tax under Section 3 started. The Circle-in-charge of Sitamarhi Commercial Taxes Circle, Bihar issued Registration No. ST 1295 (R) Zone IV which mentions the liability to pay taxes from the date of commercial production with effect from 10.08.1995. The certificate was issued to the proprietor both under the Bihar Finance Act as well as Certificate No. ST 1116 (C) under the Central Sales Tax Act on 29.10.1995. Thereafter, as and when required the certificate was renewed from time to time. Xerox copy of the Registration No. ST 1295(R) Zone under the Bihar Finance Act as well as Certificate No. ST 1116(C) under the Central Sales Tax Act is annexed as Annexure-1 to the writ application.

4. It is also stated in the writ application that the Petitioner applied for purposes of getting his stock of wood and other raw materials to be inspected from time to time by the authorities of Environment and Forest Department, Government of Bihar. The Divisional Forest Officer cum Licensing Authority, Tirhut Forest Division, granted him License No.237/1996 vide Memo No.512 dated 11.03.1996, the date on which the petitioner has applied for grant of license. Xerox copy of License No.237/1996 granted vide Memo No.512 dated 11.03.1996 is annexed as Annexure-2.

5. The Petitioner obtained No Objection Certificate under Section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, from the Bihar State Pollution Control Board vide Ref. No. T- 2517 dated 27.04.1998. The Mill is being inspected by the authorities of the Bihar State Pollution Control Board from time to time and granted No Objection Certificate for smooth running of its Mill. The Petitioner has maintained the effluent level within the limits as provided under Rule 4 of the Environment (Protection) Rules, 1986, and other similar Act and Rules for which also the Bihar State Pollution Control Board has granted Emission Consent Order from time to time.

6. It has further been stated that after obtaining License No.237 of 1996 issued from the Environment and Forest Department, Government of Bihar, the Petitioner has also obtained registration from the Commercial Taxes Department, Government of Bihar and obtained No Objection Certificate from the Bihar State Pollution Control Board, Government of Bihar, for running Veneer Mill in

accordance with the provisions of Bihar Saw Mill (Regulation) Act, 1990, and also in terms of the directions of the Hon'ble Supreme Court and in accordance with several resolutions of the State Government without any interference.

7. The Petitioner of CWJC No.2711 of 2015 has submitted that the Petitioner applied before the General Manager, District Industrial Center, Bettiah, under the Prime Minister Rojgar Scheme in the year 1994 for establishing Veneer Mill. The General Manager after considering his application directed Proprietor of the Petitioner, Sri Tufail Ahmed, to appear for interview for getting his firm registered along with necessary documents within 15 days vide Letter No.239 dated 03.02.1994. Xerox copy of the letter No.239 dated 03.02.1994 is annexed as Annexure-1 to the writ application.

8. The Petitioner after necessary permission given by the General Manager, District Industrial Center, Bettiah, purchased the necessary machines including the Peeling Machine from Bharat Engineering Works, 2 Gurudas Dutta Garden Lane, Calcutta-67, as on 19.08.1996 along with declaration that Plywood industry of the Petitioner started commercial production of veneer soon thereafter. Xerox copy of the purchase receipt of Peeling Machine along with declaration is annexed as Annexure-2 and 3 to the writ petition.

9. The Petitioner entered into agreement for sale and purchase on 02.09.1996. After establishment of Veneer Mill in the name and style of Wasif Plywood Works, the General Manager, District Industrial Center, Bettiah, granted license contained in Letter No. PMT-138 dated 10.09.1997, wherein the date of establishment of petitioner Veneer Mill has been entered as 10.10.1996 granting him Registration No.032002935. Xerox copy of Letter No. PMT-138 dated 10.09.1997 is annexed as Annexure-4 to the writ petition.

10. The Petitioner also applied for grant of license under the Factory Act in prescribed format. The Factory Inspection Department, Government of Bihar, after conducting proper inspection of Petitioner's Unit and after being satisfied that the Petitioner's Unit is functional and it has manufactured Veneer with effect from 10.10.1996, granted license under Section 6(1) (d) of the Factories Act on 20.10.1996 vide Registration No.67052/CHW/1996. Xerox copy of the license granted under Section 6(1) (d) of the Factories Act on 20.10.1996 is annexed as Annexure-5 to the writ application.

11. The Petitioner received notice bearing No.1679 for his appearance before the Assistant Commissioner Commercial Taxes, Bettiah Circle, Bettiah, on 04.10.1997. After proper hearing, the concerned authority registered the Petitioner's Unit with the Central Sales Tax under the Assistant Commissioner's Office, Bettiah Circle, Bettiah, and granted Registration No. BT 1090 (C) on 04.10.1997 as per Section 7(1)(2) of the Central Sales Tax Act, 1956, and was also registered under Section 14 of the Bihar Finance Act, 1981, and granted Registration No.BT 308 (R). After coming into force of Bihar Value Added Tax Act, 2005, the Petitioner was granted Tax Payers Identification No. i.e. TIN No.

10262131103. The Petitioner is paying tax till date. Xerox copy of the notice dated 04.10.1997, Registration granted under Central Sales Tax Act bearing No. BT 1090 (C) dated 04.10.1997 and registration granted under the Bihar Finance Act bearing No. BT 308 (R) are annexed as Annexure-6, 7 and 8 respectively to the writ petition.

12. The tax liability of the Petitioner arose from 21.10.1996 as per the provisions of the Bihar Finance Act, 1981. This fact also establishes that Veneer Mill was established much prior to 21.10.1996. The Petitioner had filed his quarterly return for the period 01.10.1996 to 31.12.1996 as well as for the period 01.01.1997 to 31.03.1997 for which he was granted Receipt No.1555 dated 30.07.1998. Xerox copy of the Receipt No.1555 dated 30.07.1998 is annexed as Annexure-9 to the writ application.

13. It has also been submitted that after coming into effect of the Bihar Value Added Tax, 2005, with effect from 01.04.2005, the Petitioner under Section 19 of the said Act was allotted TAN bearing No.10262131006 by the Assistant Commissioner of Commercial Taxes in Form C (1). Xerox copy of the TAX bearing No.10262131006 is annexed as Annexure-10 to the writ petition.

14. Petitioner has further submitted that Petitioner Veneer Mill was in operation much before 12.12.1996 would also appear not only from the aforesaid documentary evidences relating to establishment of the Petitioner Veneer Mill but also from notice contained in Letter No.1290 dated 07.08.1996, whereby the Petitioner being functional Veneer Mill was directed to furnish details regarding timber by the DFO. Xerox copy of the Letter No.1290 dated 07.08.1996 is annexed as Annexure-11 to the writ petition.

15. The Petitioner Veneer Mill was not required for obtaining license under the Bihar Saw Mills (Regulation) Act, 1990. However, in compliance of the above and the Petitioner being engaged in purchase of timber for commercial production of Veneer and for movement of timber, requirement of transit permit arose which necessitated him to obtain license under the Bihar Saw Mill (Regulation) Act, 1990. The Petitioner, accordingly, applied in prescribed form and also deposited requisite fee of Rs.1000/- by Demand Draft No.59329 dated 07.10.1997 along with application form dated 08.10.1997 as well as two NSC of Rs.2000/- dated 08.10.1997. Accordingly, Petitioner was granted License No.97 of 1998 by the Divisional Forest Officer cum Licensing Officer as per provision of Section 5 of the Act. Xerox copy of the application form, demand draft for Rs.1000/- and NSC of Rs.2000/- are annexed as Annexure-12 series.

16. The Petitioner is filing his return as per provision of Bihar Saw Mill (Regulation) Act till date. The Petitioner after establishment of Veneer Mill in the year 1996, had purchased wood necessary for production of Veneer and report containing details of the purchase of wood were prepared on regular basis for its submission and inspection by the concerned department of the Government of Bihar. The Petitioner has submitted in para 18 of the writ petition that from

aforesaid license and notice dated 07.08.1996 granted by the Divisional Forest Officer, it would appear that Petitioner Veneer Mill was established much prior to 12.12.1996. The Petitioner established Veneer Mill in the year 1996 is also apparent from Registration No.67052/CHW/1996, issued as per provision of the Bihar Factories Act, 1948, by the Factory Inspection Department, Government of Bihar. The Petitioner thereafter deposited renewal fee regularly and his license was renewed till date. The petitioner has further mentioned in the writ petition that from aforesaid fact the Petitioner is able to demonstrate and establish on the basis of certificates issued by the authorized government servant under the statutory provision of Bihar Saw Mills (Regulation) Act, 1990, The Factories Act, 1948, Bihar Sales Tax Act, 1981, Central Sales Tax Act, 1956, purchase receipt of Machines, document of lease of the land for establishment of Unit and other necessary documents for establishment of Veneer Mill confirms the fact that Petitioner had started business of Veneer with effect from 10.10.1996. The Petitioner Veneer Mill was running since 10.10.1996 also got confirmed as the Veneer Mill has obtained registration certificate from Commercial Tax Department, Government of Bihar, Patna.

17. The Hon'ble Supreme Court in the judgment passed in WP (C) No.202 of 1995 (T. N. Godavarman Thirumulpad vs. Union of India) directed each of the State Government to constitute a Committee to assess the sustainable capacity of the forests of the State. The relevant portion of the order is as follows:

"7. Each State Government should constitute within one month, an Expert Committee to assess:

i. The sustainable capacity of the forests of the State qua saw mills and timber based industry;

ii. The number of existing saw mills which can safely be sustained in the State;

iii. The optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committee so constituted should be requested to give its report within one month of being constituted."

18. The Government of Bihar constituted the Expert Committee in pursuance of the order vide Notification No.274 dated 24.01.1997 (which for the sake of convenience may be called as First Report). This report was produced before the Hon'ble Supreme Court as part of Affidavit filed by the State Government on 09.12.1997. The State Government on the basis of report of the Expert Committee, took decision to fix the number of timber based industries as (I) 1950 Saw Mills, (ii) 109 Plywood manufacturing Units and (iii) 265 Veneer Mills. The State Government further decided to close down 733 unlicensed Saw Mills immediately and the rest, in excess of fixed number, in a phased manner. The decision of the State Government was communicated to the Principal Chief Conservator of Forest vide Letter No.343 E dated 28.10.2000.

19. The Expert Committee, unlike the Saw Mills, did not recommend any reduction in number of the Veneer Mills and Plywood Industries. Therefore, the decision of the State Government to fix the number of plywood manufacturing Units as 109 and Veneer Mills as 265 as were in existence in the undivided State at the time of submission of first report was on the assumption that Veneer Mills and Plywood Manufacturing Units would get their requirement of timber from the licensee Saw Mills and through import. Following refusal of the concerned authority to renew/grant license under the Saw Mills (Regulation) Act, several writ petitions were filed and they were dismissed by order dated 29.09.2000 as reported in 2001 (1) PLJR 468 Basudeo Yadav Vs. State of Bihar. Against the order passed by the learned single Judge, appeals were preferred by the Saw Mill owners. Those appeals were also dismissed. The LPA Bench, however, expressed concern over the way the State Government identified the sustainable Saw Mills, which were to be allowed to operate. The Court, however, advised the State Government to appoint a Committee of expert / Officers to identify the Saw Mills that would be allowed to continue and those that would be closed down in the light of judgment passed by the Hon'ble Apex Court in WP (C) No.202 of 1995. The Committee prepared comprehensive list comprising of such Plywood/ Veneer Mills, which were in existence prior to 12.12.1996 and also such Plywood and Veneer Mills, which were established after 12.12.1996. List of Veneer Mill/ Plywood Industry were published district-wise for placing it before the Committee constituted to inform the Apex Court. The office of the Divisional Forest Officer, Muzaffarpur, informed that the Petitioner Veneer Mill (CWJC No.2862 of 2015) is in existence prior to 12.12.1996 and the said fact is also evident from the License No.237/1996 issued in the year 1996 and the Petitioner Veneer Mill (CWJC No.2711 of 2015) was granted license vide Registration No.67052/ CHW/1996 dated 20.10.1996. The list so prepared was sent for its approval. Pursuant to the report, the government filed its Affidavit relating to the approved Veneer Mill/ Plywood existing prior to 12.12.1996 before the Apex Court. Pursuant to that, the State Government published lists of Plywood/ Veneer Mills in existence, interalia, in the various districts of the State of Bihar vide Letter No.5977 dated 30.11.2002. The name of Bhagwati Timber Petitioner's Plywood (CWJC No.2862 of 2015) was at serial No.9 in Sitamarhi District, said to have been established prior to 12.12.1996. The name of Petitioner of CWJC No.2711 of 2015 was mentioned at serial No.1 in Bettiah District. Thus, the Government of Bihar has accepted the position that the Plywood Mills/ Veneer Mills were established before the cut off date i.e. 12.12.1996. The Government of Bihar set up second Expert Committee vide Notification No.232 E dated 05.04.2002. The Expert Committee submitted its report commonly known as Second Report on 27.04.2002 on the basis of which the State Government issued Resolution No.418 E dated 08.07.2002. The Resolution further laid down the norms for issuing licenses and/ or for shutting down the Saw Mills being in excess of the fixed numbers. Several writ petitions were filed against Resolution No.418 E dated 08.07.2002. All those writ petitions were dismissed by order dated 05.12.2002 as reported in 2003 (1) PLJR 343 Narayan Prasad Sah Vs. State of

Bihar.

20. Although Resolution No.1485 dated 08.07.2002 contained the list of number of Veneer Mills/ Plywood Industries, but the Saw Mill (Regulation) Act, 1990, as it then stood, did not cover either a Veneer Mill or a Plywood Manufacturing Unit and Timber Industries did not require any license under the Act. The State Government amended the provision of Section 2(g) by adding "it shall include Veneer Plywood manufacturing Unit" vide Notification dated 20.04.2002 published in official gazette dated 22.04.2002.

21. The Secretary to the Department of Environment and Forest, Government of Bihar, after subsequent amendment, wrote to the Principal Chief Conservator of Forest vide Letter No.2098 dated 29.06.2002 intimating him about the amendment that brought Veneer and Plywood manufacturing Units within the ambit of the Act and also the contents of the Affidavit filed before the Supreme Court in September, 1990.

22. Following the amendment in the Act, two steps were taken; (I) all Veneer/ Plywood Mills established after 12.12.1996 should be closed down by 31.07.2002 and (II) all those Veneer/ Plywood Mills that were established before 12.12.1996 should be directed to submit application for obtaining license. The State Government directed all the Divisional Forest Officer vide its Letter No.1899, 2098 both dated 29.06.2002 that all the Veneer Mills and Plywood Manufacturing Units that were set up after 12.12.1996 to be closed down immediately. Those Veneer Mills/ Plywood Manufacturing Units that were set up prior to 12.12.1996 were directed to make application in the prescribed format in Form 'B' for grant of license under the Act by 31.07.2002. Thus, the Veneer Mills and Plywood Mills, which were established before 12.12.1996 were allowed to continue to operate in their respective places in the name and style as mentioned in the list. The Petitioners continued to operate as before without any let or hindrance from any corner.

23. The Petitioners have been regularly furnishing the register as required under Section 10 of Bihar Saw Mill (Regulation) Act and submitted his return as required under Section 9 of Bihar Saw Mill (Regulation) Act and the rules framed thereunder. The Divisional Forest Officer had accepted the Petitioners' prayer to be in existence prior to 1996 by accepting the prescribed fee for renewal of the license for operating Veneer Mill.

24. The State Government vide Resolution No.418 E dated 08.07.2002 issued detailed instructions after examination of the Expert Committee Report laying down criteria for closure of wood based industries in the State of Bihar. The said report was challenged before the Apex Court by some of the Saw Mill Owners. The Apex Court referred the matter before the Central Empowered Committee by its order dated 18.08.2003. The Apex Court recommended that the State of Bihar should examine all the sources of availability of timber from the own forest area, the timber imported from other States and from other country. The Hon'ble

Court in the case of National Ply Products & Ors Vs. State of Bihar & Ors. reported in 2005 (1) PLJR 33 has clarified that intent of the Hon'ble Supreme Court's order dated 29.10.2002 was not to close every single Plywood Mill in the State of Bihar but only those, which were being operated without license under Bihar Saw Mills (Regulation) Act, 1990, as amended vide Act No.04 of 2002 to include Plywood/ Veneer manufacturing Unit under Section 3(g) vide notification dated 22.04.2002. The State of Bihar brought separate enactment to regulate the Saw Mills. The State of Bihar enacted Bihar Saw Mills (Regulation) Act, 1990 and in terms thereof the Bihar Saw Mills (Regulation) Rules, 1993, were framed which came into effect on 04.09.1993. Further, the Government of Bihar enacted Bihar Saw Mill (Regulation) (Amendment) Act, 2002 and published the same in the official gazette as on 22.04.2002, wherein, Veneer/ Plywood manufacturing Units were brought under the definition of Saw Mill under Section 2(g). The effect thereof is that all the Saw Mill and Veneer Mill have to obtain license to operate their Veneer or Plywood Mill under the provisions of the Act.

25. The State Government came out with Resolution No.55/02/760 E dated 13.11.2003 whereby detailed guidelines were provided with regard to preparation of seniority list. The said list was challenged before the Hon'ble Court vide CWJC No.11209 of 2006 and its analogous cases. The Hon'ble Court by its order dated 04.01.2009 was pleased to grant stay subject to further order of the Apex Court. The Central Empowered Committee after hearing the parties recommended the Department of the Environment and Forest, Government of Bihar, to prepare a fresh seniority list of Saw Mill, Veneer Mill and Plywood Industries after following a transparent procedure. In the said direction, it was mentioned to fix the seniority on the basis of date of establishment. Xerox copy of recommendation of Central Empowered Committee is annexed as Annexure-5 to CWJC No.2862 of 2015 and Annexure-16 to CWJC No.2711 of 2015.

26. The Department of Environment and Forest again came out with Resolution No.76/2007-2675 dated 30.08.2010 allegedly in accordance with recommendations of the Central Empowered Committee dated 11.06.2008 as well as the order of the Hon'ble Supreme Court dated 04.09.2009, whereby the recommendation of the Central Empowered Committee was accepted by the Apex Court. The detailed recommendation with regard to Plywood and Veneer is contained in paragraph No.9. The State Government in paragraph No.5(1) of the Resolution dated 30.08.2010 has written criteria for establishing the seniority of Veneer Mill region wise. It has divided the same into three regions i.e. Patna, Muzaffarpur, Bhagalpur. It has further laid criteria for establishing inter se seniority on the basis of date of establishment of the industry and for this purpose, the license granted by the Industry Department or the Factory License, whichever is earlier, will be taken into account for date of establishment of the industry or the date of license granted under the Bihar Saw Mill (Regulation) Act, 1990. Secondly, if it is found that both the date of registration are the same then the date of registration granted by the Commercial Taxes Department will be taken into account. It has further laid down in paragraph No.2 about procedure

for establishment of seniority of Veneer Mills. Xerox copy of the Resolution No.76/2007-2675 dated 30.08.2010 is enclosed Annexure-6 to CWJC No.2862 of 2015 and Annexure-17 to CWJC No.2711 of 2015.

27. The Resolution also categorically specified that in determination of seniority, license issued by the Industries Department, Factory License issued by the Department of Labour and Employment will be considered as date of establishment. It is also mentioned that if the Veneer Mill is registered with the Industry Department earlier than the Department of Factory, then the date which is earlier will be taken into account for determination of seniority.

28. The Regional Conservator of Forest, Muzaffarpur, vide Memo No.1044 dated 26.11.2010 had published provisional list of Veneer Mill on the basis of date of establishment. In the said list, the Petitioner of CWJC No.2862 of 2015 is at serial No.52 showing date of establishment as 10.08.1995 and Petitioner of CWJC No.2711 of 2015 is at serial No.81 showing date of establishment as 10.09.1997. Xerox copy of the Memo No.1044 dated 26.11.2010 is annexed as Annexure-7 to CWJC No.2862 of 2015 and Annexure-18 to CWJC No.2711 of 2015.

29. It has been pointed out by the Environment and Forest Department, Government of Bihar, in its Resolution No.2675 dated 30.08.2010 that in some of the Forest Divisions, licenses were issued to some of the Veneer Mills as well as Plywood Industries. In the said resolution, the State Government has laid down certain criteria for fixing seniority of Veneer Mill and Plywood Industries. It has specifically been laid down that only those Veneer Mills will be taken into account for preparation of seniority list which has been established before 29.10.2002. The Central Empowered Committee constituted, as per directions issued by the Hon'ble Supreme Court in T. N. Godavarman Tirumulpad case, convened meetings pursuant to the above on the subject matter regarding seniority list of wood based industries in the States as well as in Union Territory. One such meeting was convened on 16th March, 2011, wherein, minutes of the meeting were provided to the Standing Counsel appearing on behalf of the State of Bihar in Hon'ble Apex Court. It is mentioned in para 5 of the aforesaid minutes of the Central Empowered Committee that date of establishment of a Plywood/ Veneer Units needs to be determined on the basis of date of registration as a SSI Unit, the date on which the land was purchased/lease entered, the date on which electric connection was given, the date of purchase of the relevant machines, the date on which commercial production started, the date of sales tax registration, the details of Veneer/ Plywood sold by the Unit and the sales tax paid thereon, the sales tax assessment order etc. While preparing seniority list, date of establishment of Unit should not be decided merely on the basis of the date of registration as SSI Unit. If the Unit has actually started the production much later, then in that case the date on which the production started would be the relevant date for the purpose of determining the date of establishment. Xerox copy of the aforesaid resolution of the Central Empowered Committee dated 16th March, 2011, is annexed as Annexure-8 to CWJC No.2862 of 2015 and

Annexure- 19 to CWJC No.2711 of 2015.

30. After the meeting convened by the Central Empowered Committee on 16th March, 2011, representation was submitted before the Hon'ble Supreme Court bringing therein recommendations and in the light of order dated 30.03.2012 passed by the Hon'ble Apex Court in the said WP (C) No.202 1995, the States were directed to prepare seniority list of Veneer Mills at State level. Resolution No.2675 dated 30.08.2010 has been amended with respect to guidelines/ standards for determining the seniority of Veneer Mills vide Resolution No.2841 dated 06.09.2012. It has been mentioned that only 177 Veneer Mills/ Plywood Mills at the State Level shall be taken into account to grant license. Further, all the Mills, which were established prior to 30.10.2002 shall be taken into consideration. It is further clarified that while making the seniority list, priority shall be given as per date of establishment and in view of the recommendation of the Central Empowered Committee, the date of production shall be reckoned as the date of establishment for the purpose, taking into account the recommendation of the Central Empowered Committee as stated above. Xerox copy of the Resolution No.2841 dated 06.09.2012 is annexed as Annexure-9 to CWJC No.2862 of 2015 and Annexure- 20 to CWJC No.2711 of 2015.

31. The Government of Bihar came out with a provisional seniority list of Veneer Mill/ Plywood Industries vide Letter No.955 dated 20.10.2012 issued under the signature of the Principal Chief Conservator of Forest, Bihar. The Veneer Mill of Petitioner of CWJC No.2862 of 2015 was placed at serial No.189 in the said provisional list. The Veneer Mill of Petitioner of CWJC No.2711 of 2015 was placed at serial No.36 in the said provisional seniority list without taking into consideration the guidelines/standards as set forth by the Central Empowered Committee and the Resolution passed pursuant to that by the Government of Bihar. The said list consisted of two categories; first being the industries established prior to 30.10.2002, wherein, there were altogether 229 industries in the list, the second consisting of industries totalling 37 as industries established and registered after 30.10.2002. Xerox copy of the aforesaid Letter No.955 dated 20.10.2002 is annexed as Annexure-10 to CWJC No.2862 of 2015 and Annexure-21 to CWJC No.2711 of 2015.

32. Thereafter, final seniority list of Veneer / Plywood Industries were published vide Office Order No.03 dated 10.01.2013 from the office of the Additional Principal Chief Conservator of Forest cum Chief Wildlife Protection Officer, wherein, Petitioner of CWJC No.2862 of 2015 has been placed at serial No.188 in the seniority list of Veneer Mills/ Plywood Industries, wherein, the date of establishment has been fixed as 31.03.1997. Petitioner of CWJC No.2711 of 2015 has been placed at serial No.174 in the seniority list of Veneer Mills/ Plywood Industries, wherein, the date of establishment has been fixed as 23.11.1996. Xerox copy of the Office Order No.03 dated 10.01.2013 is annexed as Annexure-11 to CWJC No.2862 of 2015 and Annexure-22 to CWJC No.2711 of 2015.

33. Another final seniority list of Veneer / Plywood Industries were published vide Office Order No.32 dated 22.07.2013 from the office of the Additional Principal Chief Conservator of Forest cum Chief Wildlife Protection Officer, wherein, Petitioner of CWJC No.2862 of 2015 has been shown at serial No.210 in the seniority list of Veneer Mill/ Plywood Industries, wherein, date of establishment has been fixed as 31.03.1997. Petitioner of CWJC No.2711 of 2015 has been shown at serial No.192 showing the date of establishment as 23.11.1996. Xerox copy of Office Order No.32 dated 22.07.2013 has been annexed as Annexure-12 in CWJC No.2862 of 2015 and Annexure-23 in CWJC No.2711 of 2015.

34. The main contention on behalf of the Petitioners was that entire exercise taken up by the authority concerned raised doubt about the credibility of the respondents. The respondents have not considered the valued proposition as laid down by the Central Empowered Committee while preparing the seniority list of Veneer Mills/Plywood Industries.

35. Counsel for the Petitioners have submitted that it has been clarified by the Central Empowered Committee that priority shall be given as per date of establishment and in view of the recommendation of the Central Empowered Committee, the date of production shall be reckoned as the date of establishment for the purpose but the same has not at all been considered while preparing the seniority list.

36. Counsel for the Petitioner of CWJC No.2862 of 2015 submits that Petitioner was made liable under the provisions of Bihar Finance Act from 10.08.1995 only after it started production of Veneer and its gross turnover became more than the required condition as per provisions of Bihar Finance Act, 1981. The Petitioner failed to understand as to how and on what basis Respondents have fixed his seniority at serial No.210 treating 31.03.1997 as the date of establishment. The Respondents themselves have granted License No.237 in the year 1996 itself.

37. Similarly, counsel for Petitioner of CWJC No.2711 of 2015 submits that date of production of Petitioner's Unit has been mentioned as 10.10.1996 i.e. prior to date of registration under BST & CST and Factory Inspection Department, Government of Bihar. The concerned Respondents even after having all information have deliberately not considered while preparing the seniority list. The case of the Petitioner is that he has been put at the bottom of seniority list in arbitrary manner.

38. Both the Petitioners have challenged the seniority list on the ground that Veneer Mills at serial No.47 (M/s Hari Krishna Prasad Choudhary), serial No.68 (M/s Abhishek Plywood Industries), serial No.80 (M/s Shiv Traders), serial No.155 (M/s Bhagwati Plywood), serial No.182 (M/s India Veneer), who were in the provisional reject list (Letter No.955 dated 20.10.2012, Annexure-19) and kept outside the provisional seniority list on account of registration made after 30.10.2002 have been placed at serial Nos.11, 28, 23, 7 and 9 respectively in an

arbitrary manner in the final seniority list prepared on 22.07.2013 without any justification.

39. Counsel for the Petitioners submits that seniority list of Veneer Mills/ Plywood Industries in the State of Bihar issued under the signature of Principal Chief Forest Conservator, Bihar, vide Letter No.955 dated 20.10.2012, Office Order No.03 dated 10.01.2013 contained in Memo No.35 dated 10.01.2013 and final list contained in Memo No.937 dated 22.07.2013 communicated vide Office Order No.32 dated 22.07.2013, have been prepared without any standard yardstick and in contravention of the guidelines set forth by the Central Empowered Committee constituted by the Hon'ble Supreme Court and also against Resolution No.2841 dated 06.09.2012 of Environment and Forest Department, Government of Bihar. It has further been submitted that Respondents have not taken up the exercise in right direction and there is clear violation of terms and conditions as set by the Central Empowered Committee as well as Resolution passed by the Govt. of Bihar while preparing the seniority list of the Veneer Mills/ Plywood Industries.

40. It has further been submitted that from bare perusal of final seniority list issued vide Office Order No.32 dated 22.07.2013 when read with provisional seniority list dated 20.10.2012, wherein, the details as set forth by the Apex Court, it is evidently clear that no standard yard stick have been adopted while preparing the list. It is also unclear that on what basis the date of establishment has been reckoned and relied. They have contended that final seniority list is full of defects and anomalies and fit to be quashed.

41. Counsel for the Petitioner of CWJC No.2711 of 2015 has submitted that he has filed representation dated 04.04.2014 along with other aggrieved persons indicating the discrepancies. Xerox copy of the representation dated 04.04.2014 is annexed as Annexure-24 to CWJC No.2711 of 23015. The representation filed by the Petitioner was not entertained and without passing any order on merit, the respondents have informed the Petitioner and others vide Letter No.1707 dated 10.06.2014 to move before the Hon'ble Court in view of Resolution No.2841 dated 16.09.2012 to ventilate his grievance with regard to his position in the seniority list. Xerox copy of the Letter No.1707 dated 10.06.2014 is annexed as Annexure- 25 to CWJC No.2711 of 2015.

42. Counter Affidavit has been filed on behalf of Respondent No.2 in CWJC No.2862 of 2015. Respondent No.2 has submitted that for renewal of license up to year 2007, application was submitted by Ramakant Sah, the Petitioner, but thereafter, sometime it has been submitted by the Petitioner and sometime by Mahendra Choudhary. The license was not renewed. The license was renewed for the year 2014 in the name of Mahendra Choudhary by the Divisional Forest Officer, Sitamarhi Forest Division. Proprietor of M/s Bhagwati Timber is Mahendra Choudahry and not the Petitioner and hence, his writ application is fit to be dismissed. It has further been submitted in the Counter Affidavit that Central Empowered Committee in its report dated 09.03.2011 has made

recommendation with regard to preparation and publication of seniority list of Veneer Mills and Plywood Pasting Units. Details has been mentioned in para 8 of the aforesaid recommendation, which has been elaborately discussed in para 8 of the Counter Affidavit. It has further been submitted in para 9 that the Central Empowered Committee vide its letter dated 26th July, 2012, has further clarified the recommendation, which is elaborately discussed in the said paragraph by Respondent No.2. Xerox copy of the letter dated 26.07.2012 is annexed as Annexure-A to the Counter Affidavit.

43. It has further been submitted that report dated 09.03.2012 of the Central Empowered Committee was considered by Hon'ble Supreme Court and vide order dated 30.03.2012 the Hon'ble Supreme Court directed the Government of Bihar to take immediate action to finalize seniority list of Saw Mills, Veneer Industries and Plywood Industries in conformity with various orders passed by the Hon'ble Court as well as observations and recommendations made by the Central Empowered Committee in its report dated 09.03.2012. The State Government was asked to issue rules incorporating the recommendations made by the Central Empowered Committee in accordance with Bihar Saw Mills (Regulation) Act, 1990, and notify final seniority list as per rules and report compliance. After finalization of lists of Saw Mill, Veneer Mills and Plywood Industries, a report in this regard has been filed before the Hon'ble Supreme Court, which is still under consideration. It has further been submitted in para 11 of the Counter Affidavit that as per recommendations made by the Central Empowered Committee, a notice was published in the newspaper on 27th July, 2012, inviting information from the Veneer Mill and Plywood Industries owners regarding their Units in a fixed format. The information was to be made available by the Mill owners including the information with regard to the eight points which are stated in para 8 (v) of CEC report dated 09.03.2012. The State Government vide resolution No.2841 dated 06.09.2012 taking into consideration the recommendation made by the Central Empowered Committee and order passed by Hon'ble Supreme Court, laid down the guidelines for preparation and publication of seniority list of Veneer Industries. Xerox copy of the resolution dated 06.09.2012 is annexed as Annexure- B to the Counter Affidavit.

44. The Respondents have submitted that on the basis of information received by the owners of Veneer Mills and Plywood Industries, provisional seniority list of Veneer Mills was prepared and published vide Order No.78 dated 09.10.2012 of the office of the Principal Chief Conservator of Forests, Bihar. The criteria for deciding the inter se seniority between the Veneer Mills was explained in the said order. Objections were invited on the provisional seniority list and it was clearly mentioned in the order that inter se seniority has been decided on the basis of information made available on the fixed format by the Veneer Mill owners and hence the inter se seniority shall be finalized on verification of the records of the said Mill at the time of hearing.

45. After receipt of objections, date of hearing on objections was fixed. Notice

was issued in newspapers by which all the owners of Veneer Mills were asked to be present on the date of hearing with the original papers. In the notice, date of hearing and place of hearing was mentioned. It has further been mentioned in the Counter Affidavit that after hearing the objectors, seniority list was prepared. During hearing, almost all the owners, who had submitted their claims for Veneer Mill or Plywood pasting Unit, had appeared and their original papers were verified by the Committee. Only few members did not appear during hearing and their cases were disposed off on the basis of information submitted in their application. It has been mentioned in para 18 of the Counter Affidavit that on the basis of documents produced during hearing the date of establishment of Unit was fixed and thereafter seniority list of the Veneer Mill of the State was issued vide Order No.03 dated 10.01.2013 of the office of Additional Principal Chief Conservator of Forests cum Chief Wildlife Warden, Bihar. Vide Office Order No.02 dated 10.01.2013 of the said office, the list of Plywood pasting Units, which were found to have been established before 30.10.2002, was also published.

46. It is mentioned in para 19 of the Counter Affidavit that on the basis of recommendation made by Central Empowered Committee and its clarification on recommendations vide letter dated 26.07.2012 principles have been adopted for determining the date of establishment of a Unit, which have been discussed, in detail, in aforesaid paragraph. It has further been submitted that after publication of seniority list of Veneer and Plywood pasting industries, various objections were received. Writ applications were also filed in the Hon'ble Patna High Court. In some cases, order was passed by the Hon'ble Court to dispose of the objection received in accordance with law. Decisions were taken by the State Government to grant another final chance to the owners of the Veneer Mills and Plywood pasting Units. In pursuance of the said decision, notice was again published on 12.05.2013 inviting objections on the seniority list of Veneer Mills and Plywood pasting Units published vide order dated 10.01.2013. The last date fixed for filing the objection was 22.05.2013. More than one hundred objections were received till the last date. After receipt of the objections, date of hearing was fixed on the objections and the date of hearing along with the place of hearing was published in the newspaper. All the objectors except a few were present on the date of hearing and after hearing decisions were taken on their objection by the Committee. After taking decisions on the objections, final seniority list of Veneer Mills of the State has been issued vide Order No.32 dated 22.07.2013 and list of Plywood pasting Units established before 30.10.2002 has been issued vide Order No.31 dated 22.07.2013.

47. It has been submitted by the Respondents that the seniority list of Veneer Mill and Plywood pasting Units, which have been found to be established before 30.10.2002 in the State of Bihar, has been published and a detailed report in this regard has already been submitted before the Hon'ble Supreme Court.

48. The respondents have also given para wise reply in the Counter Affidavit with regard to objection of the Petitioners.

49. The Respondents in CWJC No.2711 of 2015 have given specific reply in para 42 with regard to statement made in para 62 of the writ petition (CWJC No.2711 of 2015), wherein, it has been alleged that rank of the Petitioner was brought down in the seniority list to benefit the others. Reference was made to various Units, which had been kept outside the provisional list on account of registration made after 30.10.2002, have been placed at serial Nos.11, 28, 23, 7 and 9 respectively of the final seniority list in arbitrary manner without any justification. The Petitioner has also filed representation dated 04.04.2014 along with other aggrieved persons indicating discrepancies vide Annexure-24 (CWJC No.2711 of 2015). The Respondents have informed vide Letter No.1707 dated 10.06.2014 to move before the Hon'ble Court in view of Resolution No.2841 dated 16.09.2012 to ventilate his grievance vide Annexure- 25 (CWJC No.2711 of 2015).

50. Petitioner of CWJC No.2711 of 2015 has filed detailed supplementary Affidavit deprecating the action of the Respondents with regard to the Units as mentioned in para 62 of the writ petition having been placed above in the seniority list in arbitrary manner. The Petitioner has mentioned, in detail, in para 10, 14 of the Supplementary Affidavit that no proper consideration was made by the Respondents in preparation of final seniority list.

51. By way of reply to the Counter Affidavit in CWJC No.2862 of 2015 in para 17, it has been stated that Petitioner is a partnership firm and its partner are Sri Ramakant Sah (Petitioner), Sri Mahendra Choudhary and Sri Dukha Rai. The Petitioner is running its Saw Mill in accordance with law. The Respondents in most illegal manner has shown favour to Veneer Mills, which were much below in rank and established after the Petitioner, and has been made senior to the Petitioner in the list prepared by the Office of the Principal Chief Conservator of Forest contained in Office Order No.32 dated 22.07.2013. The petitioner in para 13 to the reply of the Counter Affidavit has stated that his name has been brought down in the seniority list as mentioned in para 52 of the writ petition in most arbitrary manner without any justification. It is mentioned in the aforesaid reply that no standard yardstick have been adopted while preparing the list. It is also unclear that on what basis the date of establishment has been reckoned and relied. Counsel for the petitioner in para 9 to the reply to Counter Affidavit has stated that Respondents have admitted that petitioner was granted License No.237/1996 by Memo No.512 dated 11.03.1996. They have also admitted the fact that the application of renewal of license has sometime been submitted on behalf of the petitioner, Ramakant Sah, and sometime by Mahendra Choudhary. They have tried to mislead the Court that the firm is running in the name of Proprietor Mahendra Choudhary only. From the records, it will appear that firm is partnership firm and its partners are Ramakant Sah (Petitioner), Mahendra Choudhary and Dukha Sah.

52. This Court after looking into entire facts and circumstances of the case, as mentioned above in detail and after hearing submission of the parties and also

considering the statement made in the Counter Affidavit finds that Respondents have not been able to give any justifiable reason with regard to the allegations made by the petitioner that seniority list of Veneer Mill and Plywood industries have been prepared without following any standard yardstick in contravention of the guidelines set forth by Central Empowered Committee and Hon'ble Supreme Court in arbitrary manner. Specific allegation has been levelled by the Petitioners in both the writ petitions that several Units, which have not found place in provisional seniority list published earlier, have been placed above the Unit of the Petitioners in the seniority list in most arbitrary manner.

53. The Respondents have themselves mentioned in the Counter Affidavit filed in CWJC No.2862 of 2015 about the details of the recommendations made by the Central Empowered Committee in its report dated 09.03.2011 with regard to preparation and publication of seniority list in para 8 and 9 of the Counter Affidavit.

54. This Court is not satisfied with the submission made by the Respondents that aforesaid guidelines have been properly followed by them in preparing seniority list.

55. The specific allegation has been made by the petitioner that Veneer Mill at serial No.47 (M/s Hari Krishna Prasad Choudhary), serial No.68 (M/s Abhishek Plywood Industries), serial No.80 (M/s Shiv Traders), serial No.155 (M/s Bhagwati Plywood), serial No.182 (M/s India Veneer), who were in the provisional reject list (Letter No.955 dated 20.10.2012, Annexure-19) and kept outside the provisional seniority list on account of registration made after 30.10.2002 have been placed at serial Nos.11, 28, 23, 7 and 9 respectively in an arbitrary manner and without any justification.

56. It has further been submitted by the petitioner of CWJC No.2711 of 2015 that he had also filed representation dated 04.04.2014 along with other aggrieved persons vide Annexure-24 (CWJC No.2711 of 2015) pointing out arbitrary manner in which seniority list has been prepared, but the aforesaid representation was not entertained and without passing any order on merit, the Respondents have informed vide Letter No.1707 dated 10.06.2014 to move before the Hon'ble Court to ventilate his grievance.

57. In such circumstances, this Court is of the view that seniority list of Veneer Mills / Plywood Industries published vide Office Order No.32 dated 22.07.2013 from the Office of the Additional Principal Chief Conservator of Forest cum Chief Wildlife Protection Office as contained in Annexure-12 of CWJC No.2862 of 2015 and Annexure-23 of CWJC No.2711 of 2015 are not in accordance with law and are hereby quashed.

58. The Respondents authorities will consider the case of the Venneer/ Plywood industries as mentioned in seniority list along with case of the Petitioners after strictly following the recommendation of the Central Empowered Committee and order of the Hon'ble Supreme Court in transparent and legal manner while

preparing fresh seniority list. The Respondents shall consider the date of establishment of Veneer Mills/ Plywood Units in the State of Bihar in terms of guidelines laid down by Central Empowered Committee as mentioned in para 8 and 9 of the Counter Affidavit filed in CWJC No.2862 of 2015.

59. Both the writ applications are, accordingly, allowed.

60. Since this Court has not heard the other Units, whose name finds mention in final seniority list, status quo with respect to seniority as contained in Office Order No.32 dated 22.07.2013 shall be maintained till final seniority list is prepared afresh by the Respondents after considering case of each Unit along with Petitioners on merit. The Respondents will verify the documents of all the individual Units including the Unit of the Petitioners in transparent manner on the basis of recommendation of Central Empowered Committee as mentioned in detail in para 8 and 9 of Counter Affidavit filed on behalf of Respondent No.2 in CWJC No.2862 of 2015 with respect to date of establishment of their Units. The Respondents shall prepare fresh seniority list after considering the case of Petitioners vis-a-vis all the Units whose names find mentioned in seniority list published vide Order No.32 dated 22.07.2013, within a period of nine months from the date of receipt/production of a copy of this judgment.

61. The Petitioners will file separate representation before Respondent No.2 along with relevant documents and copy of this judgment. The Respondent No.2 will pass necessary order with respect to case of Petitioners while preparing the seniority list afresh, after considering the case of each Unit as mentioned in Office Order No.32 dated 22.07.2013 in transparent and legal manner, within a period of nine months as ordered above.