

**(2021) 01 PAT CK 0277**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 2979 Of 2017

Abhay Tiwari And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision :** 11-01-2021

**Acts Referred:**

Bihar Excise (Settlement Of Licences for Retail Sale Of Country/Spiced Country Liquor/  
Foreign Liquor/ Beer And Composite Liquor Shop) Rules, 2007 — Rule 20(iii), 20(iv)  
Constitution Of India, 1950 — Article 226

**Citation :** (2021) 01 PAT CK 0277

**Hon'ble Judges :** Sanjay Karol, CJ; Partha Sarthy, J

**Bench :** Division Bench

**Advocate :** Suraj Narain Yadav, Vikash Kumar

**Final Decision :** Dismissed

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## **Judgement**

Petitioner has prayed for the following relief(s):

â??This is an application for issuance of a writ in the nature of Certiorari to quash the order as contained in memo no. 3500 dated 29.08.2013 issued

by the respondent no. 5 to the extent by which it has been directed that the distribution fee @ Rs. 3/- per LPL on IMFL and per BL on Beer

respectively be recovered from the retail licensee for the supply of IMFL/Beer made between 01.04.2013 to 16.04.2013 for its reimbursement to the

manufacturers/suppliers and further for issuance of a writ in the nature of mandamus directing the respondent BSBCL to refund amount to the

petitioners which has been deducted from their respective balance account with the BSBCL.â??

It is the common contention of the parties that the instant petition has to be disposed of in terms of the decision dated 25.06.2014 rendered by a Co-

ordinate Bench of this Court in C.W.J.C. No. 24646 of 2013, titled as Nawal Kishore Singh Vs. The State of Bihar & Ors., which is extracted as

under:-

“These two Writ Petitions under Article 226 of the Constitution have been filed by the retail sellers of liquor. The challenge is against the direction

of the Managing Director, Bihar State Beverage Corporation Limited (hereinafter referred to as ‘the Corporation’) issued on 29th August 2013 to

recover distribution fee of Rs.3/-per LPL (London Proof Liter) of foreign liquor and of Rs.3/-per BL (Bulk Liter) of beer, from 1st April 2013 to

16th April 2013.

Learned advocate Mr. Satyabir Bharti has appeared for the petitioners. He has submitted that the petitioners being the licensee for retail sale of

foreign liquor/beer, they had purchased the stock from the Corporation at the maximum retail price fixed by the State Government and printed on the

container. Under the terms of licence, they are supposed to make retail sale at the price printed and not more. Although the Corporation is not

empowered to levy any fee upon the retail sellers, under the guise of distribution fee the Corporation seeks to recover the additional amount illegally

and without authority of law.

In support of his submission, Mr. Bharti has relied upon rules 20(iii) and 20(iv) of the Bihar Excise (Settlement of Licences for Retail Sale of Country

Liquor/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007.

The Petitions are contested by the State Government and the Corporation. Learned Principal Additional Advocate General Mr. Lalit Kishore has

appeared for the State Government and the Corporation. He has vehemently opposed the writ petitions. Mr. Lalit Kishore has relied upon the liquor

sourcing policy reproduced in the writ petitions. He has submitted that the licence fee for the manufacturers was enhanced under the Government

Notification dated 7th December 2012. However, commensurate enhancement in the retail price was not made upto 17th April 2013. The Corporation

had, therefore, to pay higher price to the manufacturers. However, it could not recover the price higher than the maximum retail price for the retail

sale. The Corporation is, therefore, entitled to recover the amount of difference from the retailers. He has further submitted that the petitioners have

failed to establish that the petitioners had not recovered the price higher than the fixed price from the retail buyers. The petitioners, therefore, should pay the distribution fee to the Corporation.

We are unable to agree with Mr. Lalit Kishore. The terms and conditions of the retail licence require the retail seller to sell the liquor to the retail buyers at a price not higher than the printed price. The presumption should be that the petitioners have sold the liquor at a price not higher than the printed price. If at all the Corporation has a dispute, the burden lies upon the Corporation to prove otherwise.

Mr. Lalit Kishore has failed to establish that the Corporation has a right to charge distribution fee from the retail sellers. In absence of any power conferred upon the Corporation, the Corporation was not justified in issuing the impugned direction dated 29th August 2013 or in collecting the distribution fee from the retail sellers.

No other contention is raised before us. The Writ Petitions are allowed. The impugned order dated 29th August 2013 issued by the Bihar State Beverage Corporation to collect the distribution fee is quashed and set aside.

We may clarify that this order shall apply to the writ petitioners alone.â??

The directions issued in C.W.J.C. No.24646 of 2013 (supra) shall apply mutatis mutandi also to the instant petition, more so for the reason that the said

decision stands affirmed by Honâ??ble Apex Court with the dismissal of the Special Leave Petition filed by the State bearing Petition(s) for Special

Leave to Appeal (C) No(s). 13520/2017, titled as The Bihar State Beverage Corporation Ltd. & Ors. Versus Manju Devi & Ors.