
(2019) 12 JH CK 0155

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 361 Of 2018

Amrendra Kumar Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Bihar And Orissa Excise Act, 1915 — Section 8(2), 8(3), 90, Rule 107
Haryana Amendment Act, 1995 — Section 15

Citation : (2019) 12 JH CK 0155

Hon'ble Judges : Dr. Ravi Ranjan, C.J.;Sujit Narayan Prasad, J

Bench : Divison Bench

Advocate : R. R. Mishra, Rahul Kr. Gupta

Final Decision : Dismissed

Judgement

1. The present intra-court appeal is under Clause 10 of the Letters Patent against the decision dated 23.03.2018 passed in W.P.(C) No.854 of 2010

whereby and whereunder the demand of the differential amount of the license fee for the period 2004-05 amounting to Rs.3,00,000/- as demanded by

the respondents vide decision as contained in Memo No.299 dated 11.02.2010 has been quashed and set aside to the extent related to the period 2004-

05.

So far as the period from the year 2005-06 to the period 2009-10 are concerned, the demand of differential amount of Rs.10,00,000/- has been upheld.

2. Before entering into the factual dispute it is relevant to enumerate some factual aspect which is the subject matter of the lis.

The appellant-writ petitioner had made an application for running a Bar-cum-Restaurant within Chas sub-division of Bokaro District in the name and

style of "Taste Paradise" and hence applied for issuance of license in due

format as contained under Form 9 & 10 which was issued in favour of the appellant/writ-petitioner after proper verification for the year 2002-03 on depositing required annual license fee of Rs.1,00,000/-.

Subsequently, the license was renewed for the year 2003-04 and 2004-05 on depositing annual license fee of Rs.1,00,000/- which was the license fee prevalent during the relevant periods.

The respondent-State came out with a substituted rule, Rule 107 on 31.07.2004, that was during the subsistence period of license, i.e., 2004-05, in

exercise of power conferred under Section 90 of the Bihar and Orissa Excise Act, 1915 (hereinafter referred to as the Act, 1915) by which the

license fee for retail sale of India Made Foreign Liquor (IMFL) had been revised.

The respondent authorities, in view of such substitution of the Rule, after verification, fixed the license fee for the period 2005-06 at Rs.2,00,000/-,

which had been deposited by the appellant/writ-petitioner and got his license renewed for the period 2005-06 but subsequently vide Memo No.1737

dated 18.10.2005, the appellant/writ-petitioner was directed to deposit Rs.3,00,000/- more as the respondent No.5 considered the said Bar and

Restaurant of the appellant/writ-petitioner situated within the town area of Bokaro and thus, as per Memo No.1142(B) dated 31.07.2004, the

appellant/writ-petitioner had been held liable to pay license fee of Rs.5,00,000/- for the period 2005-06.

The appellant/writ-petitioner, being aggrieved with the said demand notice moved before the Commissioner of Excise, Jharkhand, Ranchi by filing

Misc. Case No.03 of 2005 which was dismissed vide order dated 18.10.2006. The appellant/writ-petitioner had preferred revision before the Member

Board of Revenue under the power conferred under Section 8(3) of the Act, 1915 being Board Case No.119 of 2006, the same was disposed of vide

order dated 30.03.2007 setting aside the order passed by the Commissioner Excise and directed the respondent No.5 to raise the demand of license

fee from the appellant/writ-petitioner strictly in accordance with the amended Rule 107.

The respondent No.5, in pursuance to the order passed by the Member Board of Revenue on 30.03.2007, has renewed the license of the

appellant/writ-petitioner to run the Bar and Restaurant for the year 2007-08 after deposit of annual license fee @ Rs.2,00,000/- but subsequent

thereto, a demand notice was issued on 11.02.2010 whereby and whereunder the appellant/writ-petitioner was directed to deposit Rs.13,00,000/- by

25.02.2010 in one lump sum as a difference of license fee for the period of 2004-05 to 2009-10, failing which the same would be realized with interest

as Government dues.

The appellant/writ-petitioner against the aforesaid order has preferred the writ petition under Article 226 of the Constitution of India.

3. The learned Single Judge while disposing of the writ petition vide decision dated 23.03.2018 had set aside the demand pertaining to the period of

2004-05 amounting to Rs.3,00,000/- but so far as the period from 2005-06 to the period from 2009-10, the differential amount which was to be paid by

the writ petitioner, has been upheld, against which the present intra-court appeal has been preferred.

4. Mr. R. R. Mishra, learned counsel for the appellant/writ-petitioner, firstly, has raised the issue of applicability of the amendment of Rule 107

incorporated vide notification dated 31.07.2004.

According to him, the license to run the Bar and Restaurant has been issued in favour of the appellant/writ-petitioner prior to 31.07.2004 and as such

there cannot be any change in the license fee on the subsisting license. Secondly, the issue of limitation has been raised that no such demand can be

raised after lapse of five years.

5. The respondent-State of Jharkhand has been represented by Mr. Rahul Kumar Gupta, Sr. SC-I who has defended the impugned order by

submitting that even though the license of the appellant/writ-petitioner was granted in the year 2002-03 but in view of the notification dated 31.07.2004,

the appellant/writ-petitioner is liable to make payment of the differential amount due to enhancement in the license fee.

So far as the issue of limitation is concerned, submission has been made by the learned State counsel that the period of limitation will not be applicable

since it is recurring cause as because the license of the appellant/writ-petitioner is being renewed year to year and the day when the notification dated

31.07.2004 came into play, the earlier license fee will lose its force being substituted by the renewed license and therefore, it cannot be said that the

said demand suffers from the period of limitation.

6. This Court, after having heard the learned counsel for the parties and after

going across the pleading and materials available on record, has found there from some undisputed facts to the effect that the appellant/writ-petitioner has made an application for grant of license to run Bar and Restaurant which was granted on fulfilling the terms and conditions for license year 2002-03 issued on 31.05.2002 and subsequently it was renewed as would be evident from Annexure-1 series.

The respondents have come out with a notification issued in exercise of power conferred under Section 90 of the Act, 1915 whereby and where under the present provision as contained under Rule 107 has been substituted by enhancing the quantum of license fee.

7. The respondent authorities came out with an order by way of issuance of notice upon the appellant/writ-petitioner as contained under Memo No.1737 dated 18.10.2005 ordering the appellant/writ-petitioner to make payment of differential amount on the basis of enhancement in the license fee as per the notification dated 31.07.2004.

The appellant/writ-petitioner approached before the Excise Commissioner under the power conferred under Section 8(2) of the Act, 1915 inter alia on the ground pertaining to the dispute of location of the Bar, the same, however, has been rejected by the Excise Commissioner against which revision has been preferred under Section 8(3) of the Act, 1915 which has been allowed by setting aside the order of Excise Commissioner with a direction upon the respondent No.3 to demand license fee from the applicant strictly in accordance with the letter and spirit of the amendment to Rule 107 of the Act, 1915 as contained in Annexure-3 of the memo of the revision.

In pursuance to the aforesaid order, a demand notice was issued on 11.02.2010 raising the demand of Rs.13,00,000/-, the same was challenged by the appellant/writ-petitioner before the Writ Court by filing a writ petition under Article 226 of the Constitution of India which was partly allowed against which the present intra-court appeal has been preferred.

8. Learned counsel for the appellant/writ-petitioner is fair enough to submit that he is not questioning the power of the Member Board of Revenue as conferred under Section 90 of the Act, 1915 which confers power upon the Member Board of Revenue to make out rules.

It is evident from the notification dated 31.07.2004 that the existing rule as under Rule 107 was substituted ().

The question which is first to be answered by this Court is what would be the effect of substitution of the Act.

The Honâ??ble Apex Court in the case of Firm A.T.B. Mehtab Majid and Co. vs. State of Madras and Another, 1963 Supp (2) SCR 43 5has been

pleased to hold that â??Once the old rule has been substituted by the new rule, it ceased to exist and it does not automatically get revived when the new rule is held to be invalid.â??

The ratio laid down by Honâ??ble Apex Court in the case of Firm A.T.B. Mehtab Majid and Co. vs. State of Madras and Another (supra) has also

been taken into consideration by Honâ??ble Supreme Court in another judgment rendered in the case of Koteswar Vittal Kamath vs. K. Rangappa

Baliga & Co., 1961 (1) SCC 255 as under paragraph-7 there of.

Reference may be made to the judgment rendered in the case of Zile Singh Vs. State of Haryana & Ors., AIR 2004 SC 510,0wherein at Paragraph

Nos.13, 15 and 16 the Honâ??ble Apex Court has been pleased to observe, which reads here under as:-

â??13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary

implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested

rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the

Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' - a

new law ought to regulate what is to follow, not the past. (See: Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition,

2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against

retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for

the benefit of the community as a whole (ibid, p.440).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law,

Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or

by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature

intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective

operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the

legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general

scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature

contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal a privilege which did not amount

to accrued right (p.392).

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the

subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such

legislations as are explanatory and declaratory in nature. The classic illustration is the case of *Att. Gen. v. Pougett* ([1816] 2 Price 381,

392). By a Customs Act of 1873 (53 Geo. 3, c.33) a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s.

4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of

these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson

C.B., in giving judgment for the Attorney General, said "" ""The duty in this instance was in fact imposed by the first Act, but the gross mistake

of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act,

but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act.

(p.395).â??

Judgment rendered by the Honâ??ble Apex Court in the case of *Government of India & Ors. Vs. Indian Tobacco Association*, (2005) 7 SCC 396

wherein the question fell for consideration was as to what would be the effect of

subsequent notification substituting the list of places specified in the original notification. The Honâ??ble Apex Court in the said judgment has observed at Paragraph-15 and 16 which reads here under as:-

â??15. The word â??substituteâ? ordinarily would mean â??to put (one) in place of anotherâ?; or â??to replaceâ?. In Blackâ??s Law

Dictionary, 5th Edn., at p.1281, the word â??substituteâ? has been defined to mean â??to put in the place of another person or thingâ?, to

â??to exchangeâ?. In collins English Dictionary, the word â??substituteâ? has been defined to mean â??to serve or cause to serve in

place of another person or thingâ?; â??to replace (an atom or group in a molecule) with (another atom or group)â?; or â??a person or

thing that serves in place of another, such as a player in a game who takes the place of an injured colleagueâ??.

16. By reason of the aforementioned amendment no substantive right has been taken away nor has any penal consequencehas been

imposed. Only an obvious mistake was sought to be removed thereby.â??

Judgment rendered by the Honâ??ble Apex Court in the case of Shamro V. Parulekar & Ors. Vs. District Magistrate Thana, Bombay & Ors., AIR

1952 SC 324, wherein Paragraph-7 reads as under:-

â??7. The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the

proper cannos of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a

part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy,

inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so

that thereafter there is no need to refer to the amending Act at all. This is the rule in England : see Craies on Statute Law, 5th Edition, page

207; it is the law in America: see Crawford on Statutory Construction, page 110; and it is the law which the Privy Council applied to India

in 'KESHORAM PODDAR v. NUNDO LAL MALLICK' 54 Ind App 152 (PC) at p. 155. Bearing this in mind, it will be seen that the Act of

1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed

and section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by section 2, that is to say, the Act of 1950 now due to

expire on the 1st of October 1952.â??

Judgment rendered by the Honâ??ble Apex Court in the case of Shyam Sundar & Anr. Vs. Ram Kumar & Anr., (2001) 8 SCC 24, wherein the

question fell for consideration was the effect of substituted Section 15 introduced by Haryana Amendment Act, 1995, in the Parent Act, i.e. the

Punjab Pre-emption Act, as applicable to the State of Haryana, whereby, the right of the co-sharer to pre-empt a sale had been taken away during the

pendency of an appeal filed against the judgment of the High Court affirming the decree passed by the Trial Court in a pre-emption suit. The

Honâ??ble Supreme Court in the case considered the effect of substituted Section 15 introduced by Amendment Act, 1955 on the substantive rights

of the parties after considering the judgments rendered in the cases of Hitendra Vishnu* Thakur & Ors. Vs. State of Maharashtra & Ors., (1994) 4

SCC 602, Garikapati Veeraya Vs. N. Subbiah Choudhary & Ors., AIR 1957 SC 54, Dayawati & Anr. Vs. Inderjit & Ors., AIR 1966 SC 1423, K.S.

Paripoornan Vs. State of Kerala & Ors., (1994) 5 SCC 59.3 Judgment rendered in the case of Shyam Sundar & Anr. Vs. Ram Kumar & Anr.

(supra) wherein at Paragraph-28, it has been observed, which reads here under as:-

â??28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation,

such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a

legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment

appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the

suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties

are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions

of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect

substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view

that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater

retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be

retrospective, unless the amending Act provides otherwise. We have carefully looked into the new substituted Section 15 brought in the

parent Act by the Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may

affect the rights of the parties on the date of adjudication of the suit and the same is required to be taken into consideration by the

appellate court. In *Shanti Devi v. Hukum Chand* this Court had occasion to interpret the substituted Section 15 with which we are

concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of

such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second

appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence

of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of the suit or on

the date of passing of the decree by the court of first instance. We are also of the view that the present appeals are unaffected by change in

law insofar it related to determination of the substantive rights of the parties and the same are required to be decided in the light of the law

of pre-emption as it existed on the date of passing of the decree.â??

9. In the backdrop of this interpretation, the Act/Rule/Regulation which has been substituted, this Court, after going across the notification dated

31.07.2004, has found therefrom that the Rule 107 has been substituted by enhancing the quantum of license fee.

In pursuance thereto, the initial demand was made on 18.10.2005 mainly on the ground of the location which according to the respondent was situated

in the National Highway, the same has been disputed by the appellant/writ-petitioner against which the litigation has been agitated before the Excise

Commissioner in which the appellant/writ-petitioner became unsuccessful which subsequently was set aside by the Member Board of Revenue under

its revisional jurisdiction wherein specific direction was passed upon the respondent to raise the demand for license fee strictly in accordance with the

Rule 107 of the Act, 1915, in pursuance thereto, the demand notice was issued on 11.02.2010.

The learned Single Judge set aside the demand prior to 31.07.2004 but on or after 31.07.2004 the demand has been upheld.

10. As has been held by Honâ??ble Apex Court so far as the effect of substitution of a law, as per the said proposition, the original Rule, i.e., Rule

107 will be substituted from the date of its inception and therefore, a question may arise that why the learned Single Judge has set aside the demand

raised prior to 31.07.2004, according to us, the same has got justification, it is for the reason that the license under the Act, 1915 is year to year, that is

known as license fee and once the license year lapses on 31st March of the year, however, it is subject to renewal but after end of the license year on

31st March of the subsequent year, the license which is to be renewed depends upon the new terms and conditions and therefore, the license up to

31.07.2004 since has lost its force after renewal of the license year, hence, whatever has been charged by the respondent in pursuance to the fee

stipulated in the license/permit issued by the respondent authorities that cannot be enhanced since the transaction of the license period having been

concluded.

But so far as the license fee on or after 31.07.2004 is concerned, since the effect of substitution of Rule 107 would lose its force in view of the

notification dated 31.07.2004, therefore, the licensee will be liable to make payment as per the rate of license fee as reflected under the substituted

rule as contained under Rule 107 as under notification dated 31.07.2004, therefore, the finding recorded by the learned Single Judge by bifurcating the

demand in two parts, first prior to 31.07.2004 and the other on or after 31.07.2004, cannot be faulted with.

11. So far as the argument of the learned counsel for the appellant-writ petitioners that the period of limitation is an issue, but according to our

considered view, the question of limitation will not arise herein since it is not a money suit rather it is the question of demand which the appellant/writ-

petitioner is liable to make payment in pursuance to the compliance of the terms and conditions of the license and the moment the rule has been

substituted under the power/authority of the Member Board of Revenue as conferred under Section 90 of the Act, 1915, it is incumbent upon the

licensee to make payment of the license fee in pursuance to the existing law.

12. This Court, in entirety of the facts and circumstances as enumerated hereinabove, is of the view that there is no reason to interfere with the order

passed by the learned Single Judge, accordingly, this appeal fails and is dismissed.