(2018) 03 JH CK 0084

In the Jharkhand High Court

Case No : W.P.(C) No. 854 of 2010

AMRENDRA KUMAR SINGH, S/O B.B.P. SINGH — APPELLANT

Vs

STATE OF JHARKHAND AND OTHER — RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:
Jharkhand Excise Act, 1915 — Rule, 107, Section 8(3), 90

Citation : (2018) 03 JH CK 0084

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Prabhat Kr. Sinha, D.K. Dubey

Final Decision : Partly Allowed

Judgement

1. Heard Mr. Prabhat Kumar Sinha, counsel for the petitioner and Mr. D.K. Dubey, Senior S.C.I appearing for the respondent-State.

2. This writ petition has been filed for the following reliefs:

Â â??the petitioner prays for issuance of a writ of or in the nature of certiorari for quashing of demand notice issued under Memo No. 299 dated

11.02.2010 (Annexure-7) by respondent no. 5 whereby and whereunder petitioner is directed to deposit a sum of Rs. 13 Lakhs as different of license

fee for the period 2004-05 to 2009-10 by 25.02.2010 in one lump sum otherwise the respondent will charge interest on the same;Â Â Â

Â and/or

Â For issuance of such other Writ(S)/ Rule(S)/ Direction(S)/ Order(S) as Your Lordship may deem fit and proper under the facts and circumstances

of the instant case.â??

3. Counsel for the petitioner submits as under:

i) Petitioner has been running a bar-cum-restaurant in the district of Bokaro in the name of Taste Paradise and as per provision of Jharkhand Excise

Act, 1915 and the rules framed thereunder, the petitioner had applied for issuance of license and the excise license was duly granted to the petitioner

on 31.05.2002 for the period from the date of issuance of licence i.e from 31.05.2002 till 31.03.2003.

ii) The amount of license fee per year as prevalent at the relevant point of time was Rs.1, 00,000/-.

iii) The petitioner submits that the license is required to be renewed every year after completion of necessary formalities and after the satisfaction of

the respondent authorities the license was renewed for the period 2003-04 and 2004-05 upon payment of Rs. 1, 00,000/- for each year.

iv) However, in the year 2004-05, on 31.07.2004, during the currency of license period 2004-05, the relevant Rule 107 was amended by the Member,

Board of Revenue in exercise of its power u/s 90 of Jharkhand Excise Act, 1915 which was contained in Memo No. 1142(B) dated 31.07.2004 and

for the period 2005-06 license fee was fixed @ Rs. 2 lakhs.Â

v) DuringÂ the period 2005-06 the petitioner was served with Memo No. 1737 dated 18.10.2005 wherein the petitioner was asked to deposit license

fee ofÂ Â Â Â Â Â Â Â Â Â Â Rs. 5,00,000/-. This according to the petitioner was pursuant to the notification dated 31.07.2004 as per clause 3 of

the notification, bar-cum-restaurant situated in Ranchi, Jamshedpur, Dhanbad, Bokaro and Hazaribagh town were required to pay license fee @ Rs.

5,00,000/- each year.

vi) The specific case of the petitioner was that the petitioner's bar-cum-restaurant is not located in the town of Bokaro and accordingly, he moved

petition before the Member, Board of Revenue under the provisions of section 8(3) of JharkhandÂ Excise Act, 1915 and challenged the said demand

of license fee.Â vii)Â The Member,Â BoardÂ ofÂ Revenue,Â videÂ order dated 30.03.2007 held that the location of the petitioner is within the

limit of Chas municipality and the order as contained in Memo No. 1737 dated 18.10.2005 was set aside and the Excise Commissioner i.e. Respondent

no. 3 was directed to issue a demand letter strictly in accordance with the letter and spirit of amendment of Rule 107 of JharkhandÂ Excise Act,

1915.

viii) However, as the petitioner had deposited license fee of Rs. 5,00,000/- for the year 2005-06,Â the said deposit was duly adjusted in the

subsequent years and ultimately, the petitioner had paid license fee for the period 2004-05 to 2009-10 @ Rs. 1,00,000/-, Rs. 2,00,000/- , Rs. 2,00,000/-,

Rs. 2,00,000/-, Rs. 2,00,000/-,Â andÂ Rs. 2,00,000/- respectively.Â

ix) Counsel for the petitioner submits that suddenly Memo No. 299 dated 11.02.2010 was issued to the petitioner and the petitioner was directed to

deposit the differential amount of license fee calculating the license fee @ Rs. 4,00,000/- each year and thus total amount of demand of Rs.

13,00,000/- was registered. This was raised on the basis of the fact that the location of bar and restaurant of the petitioner is on National Highway No.

23.

x) In the entire writ petition as well as in his argument, the counsel for the petitioner has not disputed the fact that the bar and restaurant of the

petitioner is located in National Highway No. 23.

xi) The contention of the petitioner is that the respondents have demanded the differential amount of license fee after the expiry of the majority of the

license period and during the currency of the license period 2009-10 and the petitioner has made specific statement at para 17 of the writ petition that

the rate at which liquor has to be sold at the bar is being fixed by the licensee who used to fix the same in such a manner that after sale of the liquor

they can realize their investment in the form of license fees, excise duty, sales tax and other expenses incurred by the licensee in running the Bar and

Restaurant and also to earn some profit.

xii) It is the specific case of the petitioner that as the period of license had expired, the petitioner cannot realize the difference of license fee from his

customers and therefore, the demand of licence fee on expired period of license cannot be justified and the petitioner cannot be held to be liable on

account of acts or omissions of the respondents.Â

xiii) Further the case of the petitioner is that the authorities themselves were confused about the location of the restaurant-cum-bar of the petitioner

and it was only in the year 2010, the respondents had come to know that the location of the bar and restaurant of the petitioner is located on the

National Highway.Â

xiv) Counsel for the petitioner has referred to judgment passed in the case of Ram Kumar Singh Choudhary Vs. the State of Jharkhand reported in

2005 (2) JCR 105 (Jhr)Â and has submitted that the notification dated 31.07.2004 was challenged before the Honâ??ble High Court wherein it was

held by the Honâ??ble High Court at para 9 is as follows:

â??For the reasons aforesaid, the prayer of the petitioners for quashing the Notification No. 1142(B) dated 31.07.2004 cannot be allowed. But we

hold that the enhancement of the licence fee, as sought by the said notification, will not be applicable in the cases of the petitioners licenses for which

renewal fee for the financial year 2004-05 has already been realized in advance in one lump sum prior to the issuance of the said notification and the

same cannot be enforced with retrospective effect and will be applicable only on the fresh settlement or renewal of the licenses, with prospective

effect.â??

xv) Counsel for the petitioner submits that for the period 2004-2005 the license was renewed on 12.04.2004 which is apparent from a copy of the

license annexed with the writ petition whereby license fee of Rs. 1,00,000/- was paid and since the license fee for the period of 2004-2005 was paid

prior to issuance of notification dated 31.07.2004, therefore, in view of the aforesaid judgment the differential amount of license for the period 2004-

2005 at least could not have been demanded by the respondents.Â

4. Counsel for the respondents, on the other hand, submits as under:Â

i) The notification dated 31.07.2004 was issued wherein the classification was made in connection with the location of the bar-cum-restaurant and

special class was carved out in connection with the bar-cum-restaurant located on national highway. The bar-cum-restaurant of the petitioner is

admittedly located on the national highway.Â There was also another class of bar-cumrestaurants which are situated in the city of Ranchi,

Jamshedpur, Boakro, Dhanbad and Hazaribag.

ii) Vide notification dated 31.07.2004 the license fee was fixed @ Rs. 4,00,000/-Â for the class ofÂ bar-cumrestaurant situated in the national

highway and for the class of bar-cum-restaurant situated in the Ranchi, Bokaro, Dhanabd and Hazaribagh the license fee was fixed @ Rs. 5,00,000/-.

iii) Initially the respondents were of the view that the location of the bar-cum-restaurant of the petitioner would fall in the city of Bokaro, therefore, the demand of Rs. 5,00,000/- by way of license fee was demanded for the period 2005-2006 which was challenged by the petitioner and was decided vide

order dated 30.03.2007 passed by the Member, Board of Revenue, Jharkhand in Case No. 119 of 2006 wherein a clear direction was issued to the

respondents to demand license fee from the petitioner strictly in accordance with letter and spirit of the amendment of Rules 107 ofÂ JharkhandÂ Â

Excise Act, 1915.

iv) Thereafter, the respondents conducted an inquiry regarding the location of bar and restaurant of the petitioner and accordingly Letter No. 95 dated

6.2.2010 was issued by the Executive Engineer, National Highway Road Division, Dhanbad. On the basis of this letter dated 6.2.2010, respondents

found that the exact location of the bar and restaurant of the petitioner is on the National Highway and thereafter, the impugned letter of demand as

contained in Annexure-7 to the writ petition was issued to the petitioner for demanding the differential amount of license fee.Â

v) Counsel for the respondents submits that there is no dispute that the location of the petitioner is on the National Highway and this fact is very much

within the knowledge of the petitioner and the petitioner was aware of the notification dated 31.07.2004 by which license fee was fixed.

vi) So far as the statement in para 17 of the writ petition is concerned, a counter-affidavit has been filed by the respondents wherein it has been

mentioned that the petitioner hasÂ availed the benefit of dense population of Chas Municipal township as well as benefits of site near National

Highway, butÂ has paid the license fee fixed for rural areas. Therefore, the differential amount has to be paid by the petitioner.

5. After hearing the counsel for the respective parties and after going through the material on records, this Court is inclined to grant relief to the

petitioner only for the period 2004-2005 and so far as the relief in connection with the period subsequent thereto are concerned this Court is not

inclined to grant any relief to the writ petitioner in view of the following facts:Â

a) Admittedly, the bar-cum-restaurant of the petitioner is located on National Highway.

b) It is neither the case of the petitioner nor could have been the case that the petitioner is not aware about the exact location of his bar and

restaurant.Â

c) It is also not in dispute that the petitioner is covered by the notification dated 31.07.2004.Â

d) Admittedly, for the period 2005-2006 a demand was issued to the petitioner demanding the license fee @ Rs. 5,00,000/- which was challenged by

the petitioner before the Member, Board of Revenue in District Bokaro in Case No. 119 of 2006 and the said demand of Rs. 5,00,000/- was set aside

and clear direction was issued to the respondents to demand license fee from the petitioner strictly in accordance with the letter and spirit of the

amendment to Rule 107 of Jharkhand Excise Rule, 1915. Certainly, the petitioner is covered by the terms and conditions of the license, but the

notification issued by the State from time to time is also binding upon the petitioner and the petitioner was fully aware that as per the notification dated

31.07.2004 the petitioner would be governed by Clause 4 and the bar and restaurant of the petitioner will be governed by the said clause as it was on

the National Highway.

e) It has been held by the Hon'ble Supreme Court in judgment reported in (1975) 2 SCC 633 that the license fee is the price of consideration or rental

which the government charges from the licensees for parting with its privilege in the trade of liquor. It has been held in para 20, 21 and 26 as follows:

â??Para 20 : The license fee stipulated to be paid by the appellants is the price of consideration or rental which the government charges from the

licensees for parting with its privilege in stipulated lump sum payment and is a normal incident of a trading or business transaction. This Court in the

recent decision in Nashirwar V. State of M.P. And the unreported decision dated January 21, 1975 in Civil Appeal No. 365 of 1969 Har Shanker v.

Deputy Excise and Taxation Commissioner held that the State has exclusive right to manufacture and sell liquor and to sell the said right in order to

raise revenue. The nature of the trade is such auction or by private treaty. Rental is the consideration for the privilege granted by the Government for

manufacturing or vending liquor. Rental is neither a tax nor an excise duty. Rental is the consideration for the agreement for grant or privilege by the

Government.

Para 21:Â The licenses in the present case are contracts between the parties. The licensees voluntarily accepted the contracts. They fully exploited

to their advantage the contracts to the exclusion of others. The High Court rightly said that it was not open to the appellants to resile from the

contracts on the ground that the terms of payment were onerous. The reasons given by the High Court were that the licensees accepted the license

by excluding their competitors and it would not be open to the licensees to challenge the terms either on the ground of inconvenient consequence of

terms or of harshness of terms.

Para 26 : The decisions of this Court Establish that the lump sum amount voluntarily agreed to by the appellants to pay to the State are not levies of

excise duty but are in the nature of lease money or rental or lump sum amount for the exclusive privilege of retail sales granted by the States to the

appellants.â??

f) The principle of Quid-pro-quo does not apply so far as the license fee is concerned. Persons dealing with liquor trade do not have fundamental right

to trade any liquor. It is the exclusive privilege of the State and licence fee is the rental price for parting with the exclusive privilege.Â

g) In such circumstances, the contention of the petitioner that the petitioner could fix the sale price of the liquor on the basis of the demanded license

fee and could have recovered it from the customers if the demand was issued prior to the licence period, is not acceptable and this contention is,

hereby, rejected. This is more so in view of the fact that the license fee was revised vide a notification dated 31.07.2004 and was within the

knowledge of the petitioner.Â

h) However, so far as the year 2004-05 is concerned, this Court finds that the licence fee at the enhanced rate could not have been demanded from

the petitioner in view of judgment passed by the Honâ??ble Division Bench of this Court reported in 2005 (2) JCR 105 (Jhr) as the license fee for the

period 2004-05 was paid prior to 31.07.2004, the differential amount for this period could not have been demanded by the respondents.

i) Thus, 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 impugned order as contained in Annexure-7 being Memo No. 299 dated 11.02.2010 is, hereby, quashed and set aside to the extent related to the

period 2004- 05.

j) 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/- is, hereby, upheld.Â 6.Â Â Accordingly, the writ petition is partly allowed, the amount demanded for the period 2004-05 amounting to Rs. 3, 00,000/- is hereby

set aside.Â

7. Interim order, if any, stands vacated.Â

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