
(2009) 03 PAT CK 0068
In the Patna High Court

Anuj Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Citation : (2010) 1 PLJR 107

Hon'ble Judges : J.B. Koshy, C.J;Ravi Ranjan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ application has been filed by way of public interest litigation. It is stated that the petitioner is a public spirited citizen. He has approached this Court for quashing the advertisement dated 16.3.2009 contained in Annexure - 3 issued by the Commissioner, Department of Excise and Prohibition, for the purpose of settlement of Retail Country Spirit/Spice Country Spirit and Liquor Shops and Composite Shops for the year, 2009-10 for the entire State of Bihar.

2. It is contended on behalf of the petitioner that since schedule for Parliamentary Election has been announced and the Model Code of Conduct has become effective from 2.3.2009, such an advertisement to conduct auction for settlement of shops of intoxicants cannot be made. It can be made only after election is declared. It is also pointed out that on earlier occasion auction was postponed and the existing settlees were allowed to continue with their shops.

3. Learned Advocate General submitted that this is not a public interest litigation and the petitioner is not a public spirited person rather he has filed this application on behalf of the existing licensees with an intention to get new settlement postponed as the period of existing licence is going to expire on 31st March, 2009.

4. According to the petitioner in terms of Election Commission letter No. 434/6/PLN-III major tenders, auctions of liquor vends etc. cannot be conducted after election is declared. Here all licenses issued and settlement made for liquor

shops will expire on 31.3.2009. "As a matter of routine, auction is to be conducted in March, 2009 so that new licensees can take over from 1st April, 2009. Accordingly notice was duly published in February, 2009 for holding settlement from 14.3.2009 to 23.3.2009. But since election was declared on 2.3.2009 government decided to keep the matter in abeyance for securing permission from election commission and noticed the petitioner and others. Election Commission granted permission on 16.3.2009 to conduct settlement. Accordingly new notification was published by the Excise Department on 19.3.2009 fixing the auction date between 26.3.2009 to 29.3.2009. It was published in all leading news papers. Under Rule 7(2) of the Bihar Excise (Settlement of Licences for Retail Sale of Country/Spice Country Liquors/Foreign Liquors/Beer and Composite Liquor Shops) Rule 2007 15 days of notice is required ordinarily but in special circumstances period can be reduced. Though, the above rule is not questioned in this writ petition but we have also dealt with the same in another case bearing CWJC. No. 3470 of 2009. Here after securing permission from the Election Commission on 16.3.2009, on 19.3.2009 notice was published as required under rule 7 (2) because existing licences were expiring on 31.3.2009. Since the election , was declared, the authority concerned postponed the earlier date of publication and made an application for obtaining permission and the Election Commission has given permission to conduct auction for new settlement of shops for the year 2009 - 10. Therefore, it cannot be said that there is any violation of Model Code of Conduct. Further, it is contended that since settlements are made on lottery basis, there is no question of any manipulation or favoritism. If any person feels aggrieved by the conduct of settlement, he has right to challenge the same. It is also submitted that the date of settlement has been fixed on 26.3.2009.

5. We are of the view that since date of existing licenses is going to expire on 31.3.2009 and after getting permission from the Election Commission a date i.e., 26.3.2009 has been fixed to conduct auction, it would not be just and proper to allow the petitioner to continue with the shop till the result of election is declared.

6. In the circumstances, we are not inclined to quash the advertisement merely on the ground that the date of election has been announced and the Model Code of Conduct has been made effective from 2.3.2009. We make it clear that if any irregularity is made in the conduct of settlement, the petitioner shall be at liberty to challenge the same in an appropriate proceeding.

7. Writ petition is dismissed.