(2004) 03 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3631 of 1990

Ashok Kumar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0081

Judgement

Nagendra Rai and S.N. Hussain, JJ.—The points involved in all the writ applications are the same, and as such they have been heard together and are being disposed of by a common judgment.

2. The Petitioner have challenged the notifications dated 25th April, 1990 and 30th May, 1990, as contained in Annexures 1 and 2 in CWJC No. 3882 of 1990 whereby the licence fee has been enhanced under Rules 35, 40, 106 (a)(b) and 112 (1)(2) of the Rules framed u/s 90 the Bihar Excise Act (hereinafter referred to as the Act).

3. The Petitioners are licensees under the Bihar Excise Act and they have been granted licences under different forms in terms of the provisions of the Act and Rules framed under the Act for the years 1990-91. They paid the licence fee as it was applicable at the time of grant of licence. However, by the subsequent notifications, the licence fee has been increased. In case of licence granted under Rule 35, licence fee has been increased from Rs. 300/- to Rs. 30,000/-. In case of licence granted under Rule 40, it has been increased from Rs. 50/- to Rs. 5000/-. With regard to licence granted under Rule 106(b), Rs. 1,50,000/- has been provided which was not provided earlier. Licence fee under Rule 112(1) has been increased from Rs. 600/- per annum to Rs. 30,000/- per annum and from Rs. 100/- per annum to Rs. 5000/-under Rule 112(2) of the Rules. These enhancements were made by notification dated 25th April 1990.

4. By notification dated 30th May, 1990 Rule 106(a) was substituted and licence fee with regard to Bonded Warehouse with wholesale licence has been fixed at Rs. 1,80,000/- and Rs. 25,000/- has been fixed as security money.

5. In the writ applications, the Petitioners have challenged the vires of the aforesaid amendments but during course of the argument, they have given up the aforesaid point and admitted that in view of provision contained u/s 38 of the Act and Rule making power of the Board of Revenue u/s 90 read with Sub-section 7 of Section 90 of the Act, the Board has power to enhance the rate of licence fee. However, they have challenged the enhancement of licence fee on two grounds; firstly that there has been no publication in the Official Gazette of the notifications enhancing the licence fee in terms of Section 92 of the Act and as such the same cannot be given effect to and secondly that admittedly all the Petitioners were granted licences under different forms in the year 1990 effective from 1st April 1990 to 31st March, 1991 and as such they are liable to pay licence fee at the time of grant of licence fee and not on the enhanced licence fee which was made applicable in the midst of the financial year.

6. Learned Counsel appearing for the State combatted both the submissions and submitted that publication in terms of Section 92 of the Act has already been made in the Official Gazette and produced copies of the said notifications published on 2nd May, 1990 with regard to notification dated 25th April, 1990 and 31st May, 1990 with regard to 30th May, 1990 and as such the first point raised by the Petitioners does not survive for consideration.

7. With regard to second point the learned Counsel for the State submitted that no doubt the licences were granted in the beginning of the relevant financial year. The Board has been empowered u/s 91 of the Act to exercise power given to it as occasion requires and in exercise of the aforesaid power under the said section read with Section 90 and Sub-section (7) of Section 90, the Board has enhanced the licence fee and the same is payable from the date of issuance of the notification in the Official Gazette.

8. Thus, two questions arise for consideration in these cases. The first is as to whether the publication of the notification has been made in the official gazette or not and the second is as to whether the enhanced licence fee will be applicable in a case where the licence was granted for the relevant financial year under the unamended provision.

9. Section 92 of the Act runs as follows:

92. Publication and effect of rules and notifications.-All rules made, and notifications issued under this Act shall be published in the Official Gazette, and, on such publication shall have effect as if enacted in this Act.

10. It provides inter alia that the rule made shall be published in the Official Gazette and shall have the effect as it enacted in this Act, meaning thereby, that once the Gazette notification has beer made, rule shall be treated to be a part of the Act.

11. The two notifications clearly show that they were published and the copies of the same are on record and already there was publication in the Official Gazette

and as such the first point raised on behalf of the Petitioners is not worth acceptance.

12. So far the other point is concerned, the question is as to from which date the notification is to be given effect to. In other words, whether it applies to existing licence or it will operate only with regard to licence granted for the subsequent year.

13. So far operation of the Rules are concerned, the question as to whether it will have retrospective operation or prospective operation will depend upon the nature of the amendment and the provisions made with regard to its applicability, Law is well settled that in absence of any specific provision or necessary intendment, the rule cannot have a retrospective effect.

14. Thus, the said two notifications have to be considered to find out the true intention with regard to its applicability. The earlier notification dated 25th April, 1990 amending Rules 35, 40, 106(b), 112(1)(2) provides that the notification will come into force with effect from the financial year 1990-91, meaning thereby, it will apply to the existing licence from the date of grant of licence. However, the subsequent notification dated 30th May, 1990 shows that the operation of the said notification as well as the earlier notification issued on 25th April, 1990 has been restricted and it has been held that they will come into force with effect from the 1st day of June, 1990. Thus, according to the subsequent notification it is clear that the both the notifications will Operate from the 1st June, 1990.

15. It is admitted position that the Board has power to enhance licence fee in terms of the statutory provision as mentioned above. Section 91 of the Act provides that any power conferred by this Act on the Board may be exercised from time to time as occasion requires, meaning thereby, that there is no restriction on the exercise of the power by the Board in the midst of the financial year. The Board in exercise of that power read with Section 90 Sub-section (7) thereof, has enhanced the licence fee and the notification clearly Provides that it will come into operation from 1st June, 1990. In that view of the matter, we are of the considered view that the licence fee for a period prior to 1st June, 1990 will be as provided under the unamended rules. However, from 1st June, 1990 onwards, the notifications will occupy the field and the licence fee charged for the subsequent period will be governed by the amended rules.

16. The ancillary point urged on behalf of the Petitioners that the notifications cannot be given effect to from the date of its publication for the simple reason that the publication is not sufficient unless the concerned person is made known about the same, is concerned, here the copy of the notification itself provided the date of enforcement of the notification and it will come into force from that date as stated above. However, this point will not detain this Court in view of the law Had down by the Supreme Court in the case of Union of India and Others Vs. M/s. Ganesh Das Bhojraj, wherein it has been held that the notification comes into

force and operation from the date of issuance of notification in the Official Gazette and no further publication is contemplated.

17. Thus, it is held that the amended provisions of the Rules are valid. However, it will come into operation from the date as mentioned in the notification i.e. from 1st June, 1990 and the licensee under different provisions of the Rules will be liable to pay enhanced fee for the period commencing from 1st June, 1990 and not for the period prior to that. It any licensee has deposited the enhanced licenced fee for a period prior to 1st June, 1990 that should be refunded to him within a period of two months from the date of filing of the application by him along with a copy of this judgment.

18. With the aforesaid observations/ directions, all the writ applications stand disposed of.