(2005) 05 PAT CK 0057

In the Patna High Court

Case No : CWJC No. 3332 of 2005

Baleshwar Ram — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 89(1)(3)

Citation : (2005) 4 PLJR 124

Hon'ble Judges : Nagendra Rai, Acting C.J.;S.N. Hussain, J

Bench : Division Bench

Advocate : D.V. Pathy and Satyabir Bharti in 3332, Ram Balak Mahto, Jaya Nand in 3332, M/s Jitendra Singh and Kumar Abhimanyu Pratap in 3899, for the Appellant; D.V. Pathy, Satyabir Bharti for Respondent No. 5 (in 3899), M/s R.K. Dutta and Purnendu Singh for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. The point involved in both the writ applications are one and the same, as such they have been heard together and are being disposed of by this common order. The matter in both the cases is with regard to settlement of retail shops of country liquor and spiced country liquor in the district of Patna for the year 2005-06. The petitioner of CWJC No. 3332 of 2005 was settlee of two retail shops in the district of Patna and in pursuance of sale notification of 2005-06, he had not applied for the settlement of retail shops of country liquor/spiced country liquor and the petitioner of CWJC No. 3899 of 2005 has filed the application for settlement of retail shops of country liquor/spiced country liquor but his application has been rejected on 17.3.2005 on the ground that it was ineligible for non-fulfilment of certain terms and conditions of the sale notification.

2. Admittedly, the settlement has to be made in terms of the provisions of the Bihar Excise Act and the Rules framed from time to time. Bihar Excise (Settlement of License for Retail Sale of Country Liquor/ Spiced Country Liquor) Rules, 2004 (hereinafter referred to as the Rules) was promulgated by the Bihar

Government on 22.5.2004 in exercise of power conferred u/s 89(1)(3) of the Bihar Excise Act. Rule 5 of the said Rules provides for manner and method of settlement. The sale notification was published on 1.3.2005 for Patna District fixing 17.3.2005 as the date for settlement of retails shops of country liquor and spiced country liquor by auction-cum-tender. It appears that for the year 2005-06, the Government came out with a rule that the wholesale supply of country liquor and spiced country liquor will be supplied to the retailers in bottles of the description mentioned therein. The question was as to whether the bottles should be automatic or semi-automatic. The matter came to this Court and this Court directed the Board of Revenue to take a final decision.

3. The grievance of the petitioners is that as in terms of the said notification they have to supply country liquor/spiced country liquor in bottles and up-till-now no decision has been taken with regard to wholesaler who has to supply the same in bottles on the ground that controversy about the bottles has not been settled, the holding of auction for settlement of retail shops for supply of country liquor/ spiced liquor is redundant as even if the grant of licence is made from 1st April, 2005, the supply cannot be made by the settlee in absence of the supply in bottles and they would suffer because under the terms of sale notification they cannot claim refund of the apportionment on the aforesaid ground.

4. The stand of the State on the other hand is that under the new Rules, the settlement procedure has been changed and the retail shops for sale of country liquor/spiced country liquor in Patna District have been grouped in two groups and retails shops for sale of country liquor/ spiced country liquor falling under Group Ka have been settled to M/s Kaveri Liquor Pvt. Ltd. on annual licence fee of Rs. 17,50,00,000/- and the retails shops for sale of country liquor/spiced country liquor falling under Group Kha have been settled to M/s Scope Cells Pvt. Limited on annual licence fee of Rs. 14,25,00,000/-. The petitioner of CWJC No. 3332 of 2005 did not apply at all and now he cannot challenge the settlement. So far petitioner of CWJC No. 3899 of 2005 is concerned, it applied for settlement but it did not fulfil the conditions as a result of its application has been rejected. The grounds for rejection of its application were that the petitioner claimed to be partnership firm but had not enclosed a copy of the partnership firm nor any document was filed to show that Paras.Prasad was authorised to file application on behalf of the other partners. The solvency certificate has been filed after expiry of the last date. The sale tax clearance certificates from the place of business where he intends to start business were not produced by it from all the relevant circles but from one circle. The affidavit which has been filed is not supported with supporting documents. The further stand of the State is that even if the wholesaler does not supply the country liquor/spiced country liquor in bottles as a result of which retail shops would not supply the same in bottles will not make any difference because Bihar Sacheting Rules, 1992 has not been repealed as yet, on the other hand Clause 30 of the Bihar Country Liquor Bottling Rules, 2004 notified on 16th February, 2004 clearly provides that after commencement of these Rules, the Bihar Sacheting Rules,

1992 may be repealed by the Board of Revenue with effect from such date on which a separate notification in the official Gazette shall be made for such purpose. Thus, the supply of country liquor/spiced country liquor in sachet will continue till the same are made available by wholesaler in bottles.

5. Learned counsel appearing for the petitioner in both the cases submitted that as up-till-now, the auction for settlement of wholesale supply of country liquor/ spiced country liquor has not been finalised due to decision with regard to supply either by automatic bottles or semi-automatic bottles, holding of settlement of retail shops for sale of country liquor/spiced country liquor is impermissible as in spite of settlement, the supply cannot be made in bottles as provided by the Rules mentioned above. Accordingly, no settlement should be made or should have been made. It was further submitted that the rejection of the application of the petitioner in CWJC No. 3899 of 2005 is without any basis.

6. Learned counsel appearing for the State and the intervenor, on the other hand submitted that the whole submission made, on behalf of the petitioners is misconceived. No doubt, the rule has been made to supply the country liquor/ spiced country liquor in bottles but even if the matter has not been finalised with regard to supply the same in bottles, the supply will continue in sachets in terms of the Bihar Sacheting Rules, 1992 which has not been repealed as yet.

7. This Court finds force in the submissions made on behalf of the State and the intervenor. The period of settlement commenced from 1st April, 2005. The settlement has already been made. Non-settlement would have resulted in revenue loss to the State. There is clear cut provision in the Bihar Country Liquor Bottling Rules, 2004 that after commencement of these Rules, the Bihar Sacheting Rules, 1992 will be repealed by separate notification. Clause 30 of the said Rules runs as follows:

"After commencement of these Rules, the Bihar Sacheting Rules, 1992 may be repealed by the Board of Revenue with effect from such date on which a separate notification in the official Gazette shall be made for such purpose."

8. Admittedly, no notification has been issued by the Board of Revenue as yet. As the Sacheting Rules is in force and it is admitted position that for earlier financial year, the supply of country liquor/spiced country liquor was made in sachets, as such even if the settlement is made, the supply will continue to be made in sachets unless the controversy is finally decided with regard to bottles in view of the direction issued by this Court in batch cases, being CWJC No. 3348 of 2005 and others disposed of on 15th April, 2005 [reported in Pinku Yadav Vs. The State of Bihar and Others,]. Thus, the only ground on which the prayer was made for postponing the settlement is not tenable in law. This apart, the settlement has already been made. The petitioner of CWJC No. 3332 of 2005 did not apply at all and as such he cannot now raise the grievance. Besides, it appears that his financial position is very weak. He is not even an income tax payee and as such he could not apply for the settlement of retail shops for

supply of country liquor/spiced country liquor in terms of Rule 5 of the new Rules which provides for settlement of the shops sub-division wise. So far petitioner of CWJC No. 3899 of 2005 is concerned, it did not fulfil the requirements as noticed above and as such its application has rightly been rejected. Accordingly, there is no merit in both these applications and the same are dismissed. However, if the petitioner of CWJC No. 3899 of 2005 has any grievance, it is always open to it to move before the Member, Board of Revenue who shall look into the same and take a decision in accordance with law.

