(2009) 07 OHC CK 0001

In the Orissa High Court

Case No : W. P. (C) No. 4645 of 2008

Bhikari Charan Nayak APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 23, 42, 47, 49, 52

Citation : (2010) 109 CLT 107 : (2009) 2 OLR 988 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S.R. Singharavelu, J

Bench : Division Bench

Advocate : Narasingha Patra and A.K. Patra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, A.C.J.

1. This writ petition has been filed for quashing of the impugned show-cause notice dated 15.3.2008 (Annexure-3) issued by the Superintendent of Excise, Keonjhar with a further prayer to direct the Collector, Keonjhar to open the IMFL ''OFF'' shop at Patna and Pandapada by renewing the licenses for the year 2008-09.

2. The brief facts of the case, as mentioned in the writ petition, are that the Petitioner was issued with licenses by the Collector, Keonjhar in respect of Patna an Pandapada IMFL ''OFF'' shops with monthly license fee of Rs. 20,000/- and Rs. 10,000/- respectively in the month of September, 2005 for the year 2005-06. Due to ill health of the Petitioner, he executed General Power of Attorney in favour of Bibekananda Nayak on 5. 11. 2005 to manage the Patna IMFL ''OFF'' shop and the said Power of Attorney was approved by the excise authorities. Thereafter, the licenses were renewed for the year 2006-07 with the existing license fees at that time till 31.3.2008. On 13.3.2008, in the morning hours, the excise authorities raided the house of OM Prakash Gupta, the Power of Attorney

holder of the Petitioner and found contraband article from his house. Thereafter, the excise authorities raided the shop of the Petitioner also but did not find any contraband article from shop premises, but without assigning any reason closed the shop on 13.3.2008. Thereafter, the Superintendent of Excise, Keonjhar on 15.3.2008 issued the impugned notice calling upon the Petitioner to show-cause as who why the license in respect of IMFL ''OFF'' shop at Patna and Pandapada in the district of Keonjhar shall not be cancelled for the remaining period of 2007-08 on the following ground:

1. That you have sub-let your IMFL ''OFF'' shop at Patna and Pandapada for the year 2007-08 to one Om Prakash Gupta for management without any. authority and in violation of Section-42(a) of Bihar and Excise Act''

2. The Account Book and the license, which are supposed to be inside the shop premises, was not found not it could be produced before the Inspecting Officer at the time of their visit to the shop for their verification on 13.3.2008, in violation of license condition; and

3. Om Prakash Guptat the person engaged by you for management of the shop was found in possession of contraband liquor in violation of Sections 47, 49 52, 53 & 55 of Bihar and Orissa Excise Act.

3. Pursuant to the impugned show-cause notice, the Petitioner submitted his reply on 19.3.2008 before the opposite party No. 4 inter alia stating that he has not violated any of the provisions of the Act and Rules nor has he any nexus or involvement with the alleged allegations. He has further stated that no spurious or illicit liquor has been seized from the license premises of both the shops and the excise staff seized contraband articles from the house of Om Prakash Gupta here he was residing and accordingly. the Petitioner prayed to exonerate him from the alleged charge and permit him to run both the IMFL ''OFF'' shops. A copy of the reply to the impugned show-cause notice is annexed as Annexure-4 to the writ petition.

4. A counter affidavit has been filed by the Superintendent of Excise, Keonjhar (o.p. 4) in which it has been stated Section 23 of Bihar and Orissa Excise Act coupled with the Government Notification No. 43571 dated 25.8.1998 clearly says that no agreement either through a power of attorney or anything is valid unless the same is approved by the Collector of the district concerned. In the instant case, the Petitioner has suo motu executed the power of attorney in favour of Om Prakash Agarwal without any approval of the Collector and he has never prayed before the excise authority/Collector for acceptance of the said power of attorney. In paragraph-7 of the counter affidavit, it has been stated that the Petitioner operated the ''OFF'' shops from September, 2005 till January, 2008 by paying the excise fee as warranted under the license and has made a power of authority in favour of Bibekananda Nayak on 15.11.2007. When raid was made-, a document was found and seized which shows that Om Prakash Gupta was managing the shop on behalf of the Petitioner.

5. At this stage, only notice to show-cause has been given to which a reply is to be given and accordingly, the Petitioner has given his reply vide Annexure-4 to the writ petition. However, it is not denied that nothing was found inside the shop and whatever material was found, the same was found from the house of Om Prakash Gupta, the attorney holder of the Petitioner. Owner cannot be held responsible of the personal acts of a person to whom power-of-attorney has been given. What is going on at his house cannot be clubbed with the working in the liquor shop of the owner. It is not the case that the exclusive privilege shop is within the compound of the house from which the contraband articles were seized. The contraband articles were seized from the house of Om Prakash Gupta who is said to be the attorney of the exclusive privilege holder. if any contraband article was kept in the house of the attorney-holder, the same was done in his private capacity and the exclusive privilege-holder cannot be said to be liable for any act done by the attorney-holder in his private capacity. With regard to violation of excise condition. it is the matter of enquiry to be conducted by the excise authority. Therefore, this Court is not inclined to make any comment on this, as the case, in this regard, is pre- mature one. Since the Petitioner has been given an opportunity to submit his reply, which he has submitted, in the meantime no penal action should be taken against the Petitioner merely on the basis of apprehension. The reply submitted by the Petitioner (Annexure-4) shall be considered in accordance with law on its own merit after providing further opportunity of hearing to the Petitioner and thereafter appropriate decision shall be taken thereon by the excise authority in the light of the observation made above preferably within period of three weeks from today.

The writ petition is disposed of accordingly.

S.R. Singharavelu, J.

6. I agree.

