(2007) 01 PAT CK 0113

In the Patna High Court

Case No : C.W.J.C. No. 7477 of 2006

Chandra Narain Roy APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:
Bihar and Orissa Excise Rules, 1919 — Rule 93A

Citation : (2007) 1 BLJR 727

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain, for the Appellant; Priyadarshani Jha, J.C. to A.A.G., for the Respondent

Judgement

1. Heard Mr. S.S. Asghar Hussain, Senior Advocate appearing for the petitioners in the two cases and Ms. Priyadarshani Jha, J.C. to A.A.G. IX representing the State.

2. These two cases relate to the same establishment, namely, M/s. Samrat Chemical Industries, Bahuara in the district of Vaishali, that is engaged in the manufacture and sale of Ayurvedic medicine with alcoholic contents. The petitioners in CWJC No. 7477 of 2006 seek the declaration that their manufacturing licence in Form LI issued under the Medicinal & Toilet Preparation Rules would be deemed as renewed for the period 1989-90 to 2005-06 and pray for the direction for renewal of the licence for the year, 2006-07. The other case being CWJC No. 11205 of 2006 relates to the grant of licences in Forms 13 and 13A issued under Rule 93A of the Bihar Excise Rules.

3. On the one hand, the State Government seems to be trying to prevent the misuse and abuse of Ayurvedic medicines with alcoholic contents as ordinary alcoholic beverage and to that end is, making provisions to control and regulate their manufacture and sale by amendment of the Excise Act and the Rules framed thereunder and by issuing notifications and orders with regard to appointment of wholesellers and retail dealers of such preparations. But on the

other hand individual cases slip away from the regulation net for want of proper monitoring and due to negligence in the department.

4. A few days ago in CWJC No. 4289 of 2006 (Prem Nath Singh v. The State of Bihar) we came across the case of M/s. Upma Chemical industries, engaged in manufacture and sale of Ayurvedic medicines with alcoholic contents. The holder of the LI licence in that case was able to manage that the proceeding for renewal of the licence should remain pending before the Excise Commissioner for over twelve years, all the while operating the unit on the basis of an interim order passed by this Court. The facts of the case in hand are not dis-similar. The matter of renewal of LI licence for M/s Samrat Chemical Industries somehow escaped the attention of the competent authority for about sixteen years and in the mean while the unit was operated on the basis of the judgments and orders passed by the civil courts.

5. In CWJC No. 4289 of 2006 (of M/s Upma Chemical Industries) after detailing the attending facts and circumstances the matter of renewal of licence was remitted to the Excise Commissioner with the following observations:

In the mean while the Excise Commissioner is directed to reconsider the question of renewal of the petitioners'' license in Form LI afresh, in accordance with law and in light of this order. In that regard it would be immaterial that the petitioner''s licence was not renewed for the past twelve to fourteen years. What would be more relevant and to the point is how the petitioner had conducted itself while running the manufactory by virtue of the order passed by the court. How far he observed the provisions of the Excise law and those of the M. & T.P. Act and the rules framed thereunder. Whether the produce of M/s. Upma Chemical Industries were observed (sic. abused) as alcoholic beverages? Whether the petitioner was guilty of evasion of excise duty or other charges payable to the State by clandestine sales of its produce and whether or not he was guilty of any serious breach of the provisions of the Excise law and the provisions of M. & T.P. Act and the rules framed thereunder? In this regard the Excise Commissioner may look into the earlier reports submitted by the Excise officials/Dist. Magistrate. He may call for fresh reports from the Excise officials and the Dist. Magistrate and take a final decision in the matter after giving an opportunity of hearing to the petitioner.

In order to facilitate an early disposal of the matter the petitioner is directed to appear before the excise

6. Commissioner, along with a copy of this order, within three weeks from today. The excise Commissioner is directed to pass a final order within three months from the date of the petitioner''s first appearance before him. The further running of the unit shall abide by the final order passed by the Excise Commissioner on the issue of renewal of the L-I licence. In case the Excise Commissioner allows renewal of the licence, he would also give direction for continued running of the manufactory and would also proceed to consider the

grant of licences under Forms 13 and 13A. The entire exercise must be completed within a period not exceeding three months from the date of the petitioner''s first appearance before him."

7. These two writ petitions too can only be disposed of in the same manner.

8. We accordingly dispose of these writ petitions with the observation and direction that the operative portion of the order in CWJC No. 4289 of 2006 (as extracted above) shall govern the case of the present petitioners as well.

9. It needs, however, to be clarified that the orders of the civil courts shall not be construed as a direction for grant of further renewal of the L-I license. They would at best give the petitioners protection against any penal action for having operated the unit in the past. The matter of renewal of the licence should be considered by the Excise Commissioner in accordance with law and in light of the directions given in CWJC No. 4289 of 2006. A final decision in the matter must be taken within three months from the date of receipt/production of a copy of this order before him.

10 .Let a copy of this order be given to the State Counsel for onward communication.

