(2011) 09 PAT CK 0099

In the Patna High Court

Case No : CWJC No. 18727 of 2008

Dilip Kumar Rai APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0099

Judgement

R.M. Doshit, C.J.—With the consent of the learned Advocates, this matter is heard and decided today.

2. This petition was filed by the three persons against the orders of cancellation of licence granted in favour of each writ petitioner. As a common petition by three individuals for redressal of their personal grievance is not maintainable, by order dated 28th July, 2011 we had ordered that the petition be entertained for petitioner no. 1 Dilip Kumar Rai alone and that the names of petitioner nos. 2 and 3 be deleted. Accordingly, this petition has now been amended. This petition is entertained on behalf of petitioner no. 1 alone.

3. For the financial year 2006-07 the petitioner had been granted licence for retail sale of country liquor. Before expiry of the licence period on 31st March, 2007, under communication dated 14th March, 2007 the period of licence was extended for further three months till 30th June, 2007. Under communication dated 30th June, 2007 sent by the Assistant Commissioner of Excise, Bhojpur and Buxar the said licence was cancelled and the security deposit was forfeited. The said communication refers to the order of cancellation made by the Collector. Feeling aggrieved the licensee has filed this petition under Article 226 of the Constitution.

4. Learned Advocate Mr. Ram Badan Mahto has appeared for the petitioner. He has submitted that the impugned action of cancelling the licence and forfeiture of the security deposit suffers from many infirmities. He has submitted that as it is the Collector who is empowered to cancel the licence, the Collector alone is competent to issue show cause notice. In the present case the show cause notice

was issued by the Assistant Commissioner of Excise, whereas the order of cancellation has been made by the Collector. He has further submitted that the show cause notice was issued in respect of cancellation of licence alone. No notice for forfeiture of the security deposit was ever issued to the petitioner; nor had the petitioner been given opportunity to meet with the intended action of forfeiture of the security deposit. The order of forfeiture of the security deposit is vitiated for the breach of the principle of natural justice. Mr. Mahto has also submitted that the licence was granted for the period up to 31st March, 2007 and after expiry of the period of licence, the licence could not have been cancelled. In the present case the licence period was unilaterally extended up to 30th June, 2007 and on the last date of the licence period i.e., on 30th June, 2007, the petitioner was informed about cancellation of the licence and forfeiture of the security deposit.

5. The petition is contested by the learned Advocate Mr. Vikas Kumar. He concedes that the licence period was extended unilaterally and that no action for cancellation of licence or forfeiture of security deposit was initiated prior to the expiry of the licence period on 31st March, 2007. He has candidly submitted that the impugned communication dated 30th June, 2007 though refers to the order of the Collector, no order has been made by the Collector or at least no such order is available on file.

6. Mr. Mahto has relied upon a judgment of the Full Bench of this Court in the matter of Ramnandan Prasad and 2 Others Vs. The State Of Bihar and 6 Others, to submit that the Officer cancelling the licence alone can issue the show cause notice. We cannot agree with the proposition which Mr. Mahto has made. In the above judgment the Full Bench has held that the Officer cancelling the licence has to give opportunity of hearing to the licensee. In that case the opportunity of hearing was given by the Superintendent of Excise and on recommendation of the Superintendent, the licence was cancelled. Mr. Mahto has also relied upon the judgment of a Bench of this Court in the matter of Qudrat Ali Vs. The State of Bihar and Others, In the said matter the Division Bench of this Court considered the scope of Section 42 of Bihar Excise Act, 1915 (hereinafter referred to as "the Act"). In the said judgment the Bench has held that the question of forfeiture of the security deposit would not arise until the right of refund is made and the order of forfeiture alongwith the order of cancellation is not tenable in law. The Bench has also held that for forfeiture of security deposit a specific show cause notice is required to be served upon the licensee.

7. Prima facie we do not agree with the aforesaid proposition. Upon perusal of Section 42 of the Act it is evident that Section 42 of the Act empowers the Collector to cancel the licence. Sub-section (4) thereof provides for forfeiture of security deposit. In our view, the forfeiture of the security deposit under sub-section (4) of Section 42 of the Act is necessary consequence of cancellation of licence u/s 42(2) of the Act. Hence in the case the licence is cancelled in exercise of power conferred by Sections 42(1) and 42(2) of the Act, as legal consequence

the security deposit would stand forfeited. In our view, therefore, no separate proceeding for forfeiture is warranted. We also do not agree with the proposition that the question of forfeiture of the security deposit will not arise until the claim for refund is made, nor do we agree with the proposition that the order of forfeiture alongwith the order of cancellation is not tenable in law. However, the aforesaid judgment is a binding precedent. In case we are inclined to take a different view, then the issue is required to be referred to a larger Bench. In the present case we refrain from referring the issue to a larger Bench, as there are several infirmities in the impugned order. In any view, the impugned order is not sustainable in the eye of law.

8. As we have recorded herein above, though the impugned communication refers to the order made by the Collector, admittedly the Collector did not give opportunity of hearing to the petitioner nor has the alleged order made by the Collector been brought on record. On the contrary the learned Advocate Mr. Vikas Kumar has conceded that no order made by the Collector is on record. In absence of any order made by the Collector, the Assistant Commissioner of Excise could not have issued the impugned communication.

9. It is apparent that the respondent authorities could not/did not initiate action for cancellation of licence during the subsistence of the licence period. With a view to enabling himself to make order of cancellation of licence u/s 42 of the Act, the Assistant Commissioner of Excise unilaterally extended the period of licence for a further period of three months until 30th June, 2007. Within that extended period the Assistant Commissioner of Excise initiated action for cancellation of licence and consequently forfeiture of the security deposit. Even then in absence of any order made by the Collector, the Assistant Commissioner of Excise could not have issued the impugned communication. The action of the Assistant Commissioner of Excise, Bhojpur and Buxar is ex-facie illegal, unwarranted and amounts to usurpation of power.

10. For the aforesaid reason, the petition is allowed. Impugned communication dated 30th June, 2007 (Annexure-5) is quashed and set aside. The amount of security deposit made by the petitioner will be refunded to the petitioner with interest @ 10% per annum within six weeks from today. In the event the respondents fail to refund the amount of security deposit and the interest within six weeks as directed, the aforesaid amount of security deposit will be refunded with interest @ 12% per annum.

