
(2016) 11 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.9029 of 2016

Dr. Md. Anwar Son of Mohammad Sarajuddin

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 6

Citation : (2017) 1 PLJR 319

Hon'ble Judges : Kishore K. Mandal, J.

Bench : Single Bench

Advocate : Mr. Anshuman Singh AC to PAAG-1, for the Respondent in CWJC No. 13497 of 2016; Mr. Awadhesh Prasad Sinha, Advocate, for the Petitioner in CWJC No. 5872 of 2016; Mr. Anshuman Singh AC to PAAG-1, for the Respondent in CWJC No. 5872 of 2016; Mr. Anshuman Sin

Final Decision : Allowed

Judgement

Mr. Kishore Kumar Mandal, J.(Oral) - Heard Mr. Satyabir Bharti in support of CWJC No. 9029 of 2016, Mr. Tej Bahadur Singh in support of CWJC No. 13497 of 2016 and Mr. Awadhesh Prasad Sinha appearing in CWJC No. 5872 of 2016 as well as Mr. Anshuman Singh AC to PAAG-1 for the State.

2. With the consent of the parties, all the applications are being considered and disposed of by the present order.

3. The petitioners herein are the manufacturer(s) of Homeopathy medicine for which rectified spirit is required. They held licence(s) under the Medicinal and Toilet Preparations (Excise Duties) Act,1955 (for short "the Act"). Their licence(s) expired w.e.f. 31st of March, 2016. It is submitted that they applied for renewal of licence but, in the meanwhile, the State Government by an executive order dated 17th March 2016, issued by the Excise Commissioner, Govt. of Bihar instructed all the Collectors -Licensing Authority not to renew the licence of the manufacturer wherein rectified spirit is used for the purpose of manufacture of medicines. A copy of the said order is enclosed as Annexure-1.

Petitioners have, particularly, drawn attention of the Court to Clause 3 of the said order by which they are aggrieved. For better appreciation, the Court would extract Clause 3 of the said order (Annexure-1 in CWJC No.13497 of 2016) herein below:-

"3- jkT; esa vofLFkr IHkh Fkksd ,oa [kqnjk fod`r lq"ko ds vuqKfIr;ksa dk uohdj.k ugha fd;k tk;sxk ,oa jkT; esa ,e0 ,.M+0 Vh0 ih0 vf/kfu;e 1955 ds varxrZ fuxZr vuqKfIr;ksa dk uohdj.k ugha fd;k tk;sxk vkSj ubZ vuqKfIr ugha nh tk;sxA foHkkxh; i=kad 301 fnuakd 18-1-2016 bl gn rd la"kksf/kr le>k tk,xkA"

4. It has been submitted on behalf of the petitioners that the issue raised herein was the subject-matter of consideration by a Division Bench of this Court in CWJC No. 6415 of 2016 (Shree Baidyanath Ayurved Bhawan Private Limited v. the State of Bihar and others) and other writ petitions. On a consideration of diverse submissions made at the Bar, the Division Bench allowed the writ petition(s) vide judgment and order dated 27.10.2016, the operative part whereof, as contained in para 36, is extracted herein below:-

"36. In the result, these writ applications are allowed. The impugned order, so far as it relates to Clause 3 of the Circular dated 17.3.2016, as contained in memo No. 1507, issued by the Excise Commissioner, Bihar, is quashed and the respondents are directed to renew the license in Form No. L-1 and in Form No. ND-1 of the petitioners forthwith."

5. The petitioners have relied on the said judgment and order of the Division Bench in order to contend that the present batch of writ petitions wherein the said order dated 17.03.2016 (Annexure-1) is under challenge merits to be allowed.

6. Learned counsel for the State, on the other hand, submits that in the case of Shree Baidyanath Ayurved Bhawan (supra) the Division Bench relied on another judgment of the Division Bench passed in CWJC No. 6404 of 2016 (Samrat Chemical Industries v. the State of Bihar & Ors.) as would appear from paragraph nos. 5 and 33 of the judgment passed in the case of Shree Baidyanath Ayurved Bhawan (supra). The State Government has already filed a Special Leave Petition against the judgment and order dated 30.09.2016 passed in Samrat Chemical Industries (supra). The State Government is also contemplating to file Special Leave Petition against the judgment and order passed in CWJC No. 6415 of 2016 by the Division Bench.

7. It has been urged on behalf of the petitioners that the issue as raised herein having been decided by the Division Bench, the present application should be allowed subject to the result of the SLP, if any, preferred by the State Government against the judgment and order passed in CWJC No. 6415 of 2016.

8. Learned counsel for the State, on the other hand, submits that the Court should stay its hand until an order is passed by the Hon"ble Apex Court in pending SLP filed against the order dated 27.10.2016 passed in Shree

Baidyanath Ayurved Bhawan Private Limited(supra). He has, however, not disputed that the present case is covered by the judgment and order passed by a Division Bench of this Court in the case of Shree Baidyanath Ayurved Bhawan Private Limited (supra).

9. On a consideration of the submissions of the parties and the stand taken by them at the Bar this Court, in the light of the order dated 27.10.2016 passed by the Division Bench in the case of Shree Baidyanath Ayurved Bhawan Pvt. Limited (supra), is inclined to allow these applications which, however, shall be subject to the result of the SLP to be preferred by the State Government against the order dated 27.10.2016 passed in the case of Shree Baidyanath Ayurved Bhawan Pvt. Limited (supra).

10. In the terms aforesaid, the present applications are allowed. The respondents are directed to renew the licence(s) of the petitioner(s) issued under the Act upon fulfilling all the requirements by the petitioners.