
(1994) 07 OHC CK 0038

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4027 of 1994

Dusasan Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 45
Orissa Excise Rules, 1965 — Rule 4(2), 45

Citation : (1994) 78 CLT 877 : (1994) 2 OLR 613

Hon'ble Judges : G.B. Pattnaik, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—The petitioner was the grantee of three foreign liquor shops in the district of Keonjhar. In accordance with the policy decision of the Government, he claims to be entitled to the renewal of his licence for the year 1994-95, but the licence not having been renewed under the pretended plea that a criminal case has been started against him during 1993-94, the petitioner has approached this Court.

2. Pursuant to notice issued by this Court, a return has been filed being sworn to by the Superintendent of Excise. It has been stated therein that no doubt the petitioner's licence should have been renewed for 1994-96 in accordance with the Revenue Department order dated 23-4-1991 as amended by order dated 4-1-1992, but since the grantor has a right to refuse the grant of exclusive privilege without assigning any reason, no error can be found out in not renewing the licence. It is further stated that in accordance with the Government letter dated 19-3-1994, if any licence is found to have been criminally prosecuted during 1993-94, then such licensee would not be entitled for renewal. The aforesaid Government Circular has been annexed as Annexure-6 to the writ

application. As the source of power for issuance of such Government Circular under Annexure-6 had not been indicated in the affidavit of the Superintendent of Excise, we had called upon the learned Addl. Government Advocate to file an affidavit of the State Government itself locating the power under which the aforesaid circular has been issued. Accordingly/ an affidavit has been filed on 16-7-1994 stating therein that u/s 45 of the Bihar and Orissa Excise Act, no person to whom any licence or exclusive privilege has been granted under the Act shall have any claim to the renewal of such licence or exclusive privilege, as the case may be. It has been further stated that Rule 45 of the Orissa Excise Rules, 1965 clearly indicates that licensee for retail sale of intoxicants shall not ordinarily be granted to a former licensee whose conduct has been found to be unsatisfactory, as stipulated in Rule 45(2)(b). Since a criminal case has been instituted against the petitioner, the competent authority thought it appropriate not to renew the licence.

3. In view of the rival stand of the parties, two questions arise for our consideration :

(i) Whether the Government in the Revenue Department has any power to issue such instructions as contained in Annexure-6 prohibiting the renewal of licence if a licensee is found to have been criminally prosecuted or criminal allegations are made during the year 1993-94 ?

(ii) Whether mere allegation or institution of criminal case would tantamount to the fact that the conduct of the licensee has been found to be unsatisfactory as contained in Rule 45(2)(b)?

The further contention that no licensee of exclusive privilege has a right of renewal of such privilege in view of Section 45, does not really arise for consideration, inasmuch as the petitioner who was the grantee of the exclusive privilege in question does not exercise his right of renewal as a matter of right. His right flows from the Excise Policy enunciated for 1994-95 as well as the Government order dated 23-4-1991 and the amendment order No. 38 dated 4-1-1992. In view of the excise policy evolved by the Government, an existing exclusive privilege holder was entitled to continue for a consecutive period of three years inclusive of the year in which the privilege had been granted and, therefore, the petitioner being an exclusive privilege holder for 1992-93 was entitled to the privilege for 1994-95. Once the Government passes an order indicating its policy for setting the privilege, it cannot be permitted to deviate from the same in purported exercise of the power u/s 45 of the Bihar and Orissa Excise Act. Even though the petitioner cannot be said to have a right to claim renewal in view of Section 45 of the Act as pointed out to us in course of hearing, his right that has accrued pursuant to the Government decision enunciating the Excise Policy as well as the Government order dated 4-1-1992 cannot be taken away in purported exercise of power which the Government does not have. In that view of the matter, notwithstanding Section 45 of the Act, we are of the opinion that the petitioner had the right of getting renewal of the privilege in

question for the year 1994-95.

4. The next question that crops up for consideration is whether the impugned administrative circular under Annexure-6 could be issued by the State Government in exercise of certain powers conferred under the Act. On being asked, the learned Additional Government Advocate could not point out any specific provision authorising the State Government to issue such administrative circular. The trade in excisable articles is, no doubt, not a fundamental right and in view of the nature of the trade, the excise authorities as well as the Government may retain power to issue instructions from time to time in the matter of regulating the trade. But once having decided the Policy of Settlement for a particular year and having issued the order dated 4-1-1992 conferring as right on an existing exclusive privilege holder, the said right cannot be taken away by issuance of an administrative instruction as contained in Annexure 6. We do not find any authority on the part of the State Government to issue such administrative "instructions.

5. That apart, it would be unreasonable to hold that a mere criminal allegation or institution of a criminal case without the allegations being established or proved in the appropriate forum, the holder of an excise privilege would be debarred from getting the right of renewal. Rule 45 of the Orissa Excise Rules on which learned Additional Government Advocate strongly relies clearly indicates that a renewal will not be granted to a person who has been convicted by a Criminal Court of a non-bailable offence. Sub-clause (b) of Sub-rule (2) of Rule 45 provides that a former licensee whose conduct has been found to be unsatisfactory, will not be entitled to the grant of renewal, But that sub-clause does not bring within its sweep where a criminal allegation has been made or a criminal case has been instituted, it is apparent from Sub-rule (1) of Rule 45 that only when a criminal allegation culminates in the conviction by a Criminal Court of a nonbailable offence, no licence can be renewed. In that view of the matter, we are of the considered opinion that the rejection of renewal on the basis of a mere criminal allegation or institution of a criminal proceeding is without jurisdiction. We accordingly reject the stand taken by the opposite parties in not renewing the licence of the petitioner for the year 1994-95, The impugned order of rejection is accordingly quashed. We hold that the petitioner was entitled to renewal of the licence and the exclusive privilege in question for 1994-95 subject to payment of the necessary fees and consideration therefor. The appropriate order granting licence of the privilege in question by way of renewal may be passed by the competent authority within three weeks from the date of receipt of our order.

This writ application is accordingly allowed. There will, however, be no order as to costs.

B.N. Patnaik, J.

6. I agree.