(2007) 08 PAT CK 0012

In the Patna High Court

Case No : CWJC No. 10457 of 2007

Geeta Devi APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Rule 145

Citation : (2008) 1 PLJR 210

Hon'ble Judges : Narayan Roy, J;Mihir Kr. Jha, J

Bench : Division Bench

Advocate : Y.V. Giri, for the Appellant; P.K. Shahi For the State, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Counsel for the parties. In this application the order passed by the Member, Board of Revenue in Board Case No. 171 of 2006 is under challenge and an alternative prayer has been made to issue direction upon the respondents to grant licence to the petitioner to run a Restaurant and Bar at Motipur on National Highway No. 28 in the District of Muzaffarpur.

2. The petitioner is said to be the sister of one late Rita Devi who died and upon her death the petitioner contracted marriage with the husband of Rita Devi. Rita Devi was a licensee under the provision of Bihar Excise Act, 1915 (hereinafter referred to as ''the Act'') and the licence was granted for the years 2002-03. She, in the meantime, died. After her death, the petitioner filed an application before the authorities in 2004 for transfer of the licence granted to her sister in terms of Rule 145 of the Act. The application was considered by the Collector and the same was disposed of with an observation that the licence may be transferred in favour of the applicant subject to the conditions of the provisions of law. The Collector, at the same time, directed the Excise Inspector to make an enquiry and submit a report. When no action was taken upon the order passed by the Collector under the Act, the petitioner came to this court invoking its writ

jurisdiction in C.W.J.C. No. 9891 of 2005. The writ application aforesaid was dismissed with observation that the petitioner may approach the appellate authority and in case appeal is allowed, the sum of rupees one lac deposited on 10.9.2002 on behalf of her deceased sister would be adjusted in case any licence is granted to her. Otherwise it may be open to the petitioner or to anybody claiming on behalf of Rita Devi for refund of the deposited amount, an appropriate order will be passed on the claim in accordance with law.

3. The petitioner, accordingly, went to the Member, Board of Revenue. The matter was heard at the level of the Member, Board of Revenue and the prayer of the petitioner for transfer of licence in terms of Rule 145 of the Act was rejected on the ground that in the given facts and circumstances of the case when the licence was only for the year 2002-03 and the licensee died in between, there was no subsisting licence and, therefore, the provisions of Rule 145 of the Act would not apply.

4. Mr. Giri, learned counsel for the petitioner reiterated the same facts which were advanced earlier before this court in the writ application which was earlier disposed of.

5. To us, it appears that the submission made by learned counsel for the transfer of licence is not sustainable in view of the provisions of Rule 145 of the Act coupled with the grant of licence for the period 2002-03.

6. Learned Advocate General, on the contrary, submitted that case of the petitioner was examined exhaustively by the Member, Board of Revenue and her prayer was rejected and, therefore, in no manner the order passed by the Member, Board of Revenue should be interfered with.

7. So far the main prayer of the petitioner for transfer of the licence is concerned, in our view, the question so raised stands negated in view of the earlier findings of this court as well as our view. But in any event, the petitioner, if so desires, may request the authorities for grant of fresh licence which would be considered in accordance with law. So far refund of rupees one lac already deposited by the deceased sister of the petitioner is concerned that question also stands covered by the earlier order passed by this court and, therefore, we need not issue any direction for the same. With the aforementioned observation/ direction, this application is dismissed.