(2008) 07 PAT CK 0026

In the Patna High Court

Case No : CWJC No. 7432 of 2008

Glamour Sales Private Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 42, 89

Citation : (2009) 1 PLJR 246

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Satyabir Bharti, for the Appellant; Rajnandan Prasad, for the Respondent

Judgement

1. Rule, returnable forthwith. Mr. Rajnandan Prasad, the junior counsel to Advocate General, waives service for the respondents.

2. In view of the controversy that has been raised before us, we are of the view that rule may be disposed of at this stage itself and we proceed accordingly.

3. The petitioner applied for settlement of the retail country/spiced country liquor shops in the Sadar, Siwan and Maharajganj Sub-Divisions and for issuance of licence for the year 2005-06. It is not in dispute that the petitioner was the highest bidder in respect of Siwan and Maharajganj Sub-Divisions for a monthly fee of Rs. 62,40,653/- and Rs. 17,55,985/-respectively. The settlement was effected in favour of the petitioner on 4.5.2006 and licence was issued in Form 26C.

4. It is the petitioner''s case that in terms of the Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor) Rules, 2004 (for short, "Settlement Rules''), the petitioner deposited 1/6th of the annual licence fee in form of advance security amounting to Rs. 17,55,981/- against the Maharajganj Sub-Division and Rs. 62,40,653/- against the Siwan Sub-Division, totaling Rs. 79,96,634/-. The petitioner admits that there was short fall in lifting minimum

guaranteed quota of the retail shops settled with the petitioner. As a matter of fact on account thereof, for the next financial year its licence was not renewed.

5. On 4.10.2006, the petitioner made an application for refund of the security amount amounting to Rs. 79,96,634/- after the expiry of the licence period. Subsequently it appears that a notice was issued by the Superintendent of Excise to the petitioner on 18.1.2007 asking it to explain as to why the minimum guaranteed quota for the year 2005-06 was not lifted.

6. On 2.2.2007, the Collector, Siwan passed an order forfeiting the security amount of Rs. 79,96,634/-. The petitioner challenged the order of the Collector, Siwan by filing excise appeal before the Commissioner of Excise, Bihar, Patna, which came to be dismissed on 8.11.2007.

7. The concurrent orders passed by the Collector, Siwan and the Excise Commissioner, were carried to the Member, Board of Revenue in the petition at the instance of the petitioner. The petition has been dismissed by the Member, Board of Revenue, Bihar, on 27th of March, 2008. Hence, the present writ petition.

8. The counsel for the petitioner submitted that at the time of settlement, the petitioner deposited the entire amount of excise duty at the rate of Rs. 35/- per LPL on the total minimum guaranteed quota and, thus, there was no loss of revenue to the State on account of non-lifting of quota. To bring to an end to the controversy, the counsel submitted that the petitioner was ready and willing to make up the issuance fee loss as contended by the Excise Department at the rate of Rs. 2.50 per LPL and out of the security deposit made by the petitioner, a sum of Rs. 20,55,577/- towards alleged loss of issuance fee may be adjusted.

9. On the other hand, the Government Counsel would submit that during the inspection in the month of July, 2005, lots of irregularities were found at one of the constituent shops of Maharajganj Sub-Divisional group. Then again on 26th February, 2006, during the course of inspection, the deficiencies were found. He would, thus, contend that forfeiture of the security amount does not suffer from any illegality.

10. The Settlement Rules have been framed by the Government of Bihar in exercise of the powers conferred under sub-section (1) and sub-section (3) of Section 89 of the Bihar Excise Act, 1915. Rule 3 defines various expressions. As per Rule 3(n) ''annual minimum guaranteed quantity'' means the quantity of guaranteed country liquor (including spiced country liquor) as determined by the Licensing Authority under general or special direction issued by the Commissioner of Excise and to be lifted from the bonded warehouse, licenced for the retail shop of the licensee or any other place specified by the Commissioner of Excise during an excise year for the purpose of retail sale by the licensee. Rule 17 provides for final acceptance of a bid. The payment of advance security is provided in Rule 19 that reads thus:

"19. Payment of Advance Security.- After the declaration of acceptance of the highest bid by the Licensing Authority, one fourth portion of the annual licence fee shall be paid by the highest bidder as advance security in the following manner for due execution of a contract:-

(a) An amount equivalent to sixth portion of annual licence fee shall be immediately deposited in cash or in the form of Bank Draft. The amount of cash/ Bank Draft and that of advance money deposited previously under Rule 11(a) and rule 11(c) respectively, shall be adjusted in part from security amount.

(b) The payable remaining amount on account of advance security shall have to be deposited within ten days of auction or before commencement of the licence whichever is earlier."

11. Rule 20 provides for default in advance security thus:-

"20. Default in Advance Security- In case of failure to deposit the amount of advance security, as mentioned in Rule 19, within the prescribed time, the settlement and the licence, if issued, shall stand cancelled and the deposited amount, if any, shall be forfeited to the Government. In such a circumstance, a re-auction or alternative arrangement shall be made by the Licensing Authority."

12. Rule 32 provides for action on violation of the Rules which reads thus:-

"32.(1) On violation of the provision of these Rules Conditions of licence or Conditions of Sale Notification by the licensee in any manner, actions for suspension/cancellation of the licence will be taken u/s 42 of the Bihar Excise Act.

(2) If a licence is cancelled under Rule 32(1), the issue fee, licence fee, security amount or any other amount, deposited by the licensee, shall be forfeited in favour of the Government and the licensee shall not be entitled to claim for any kind of compensation or refund."

13. Both the counsel are ad idem that the petitioner did not lift the entire quota of the licence for the year 2005-06. The Government Counsel did not dispute that although certain deficiencies and irregularities were found in a couple of constituent shops of Maharajganj Sub-Division, the petitioner''s licence was not cancelled, nor during the subsistence of licence for the year 2005-06, any notice was given to the petitioner contemplating an action of cancellation of licence. In our view, had there been cancellation of licence under Rule 32(1) because of violation of the provisions of the rules, conditions of licence or conditions of sale notification in any manner, the security amount was liable to be forfeited in favour of the Government. To that extent, there is no doubt. However, there had been no cancellation of licence issued to the petitioner by the excise authorities for the alleged irregularities or deficiencies. In the counter affidavit, the respondents have, at various places, set up the case that because of non-lifting of the full minimum guaranteed quota, the Government has been put to a loss of about Rs. 21 lacs, to be specific Rs. 20,55,577/- by way of issuance fee at the rate of Rs. 2.50 per LPL.

14. Since the counsel has shown the readiness and willingness of the petitioner for adjustment of a sum amounting to Rs. 20,55,577/- from the security amount deposited by the petitioner, in our view, the grievance of the Government is met. In a case like this, the forfeiture of entire security amount is arbitrary and unconscionable. Taking overall facts and circumstances of the case and the willingness of the petitioner for adjustment in the sum of Rs. 20,55,577/- (towards loss of issuance fee) from the security amount, we are satisfied that the following order shall meet the ends of justice:-

(i) The Collector, Siwan is permitted to adjust a sum of Rs. 20,55,557/-out of the total security amount deposited by the petitioner towards advance security against the licence for Siwan Sub-Division and Maharajganj Sub-division for the year 2005-06.

(ii) After adjustment of Rs. 20,55,557/-, the Collector, Siwan shall refund the remaining amount of advance security deposited by the petitioner against licence of Siwan Sub-Division and Maharajganj Sub-Division within two weeks from today for the year 2005-06.

(iii) No order as to costs.

Certified copy of the order be issued to the parties immediately.