
(1981) 07 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 4811 of 1978

Jainul Abdin

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-1981

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 43(b)
Bihar and Orissa Excise Rules, 1919 — Rule 143, 144

Citation : (1982) 30 BLJR 161 : (1998) PLJR 4 : (1982) PLJR 4

Hon'ble Judges : M.P. Verma, J;Birendra Prasad Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.P. Verma, J

1. This writ petitioner held a licence of the country liquor for shop No. 1 at Dehri in the district of Rohtas. He had this licence ever since the introduction of the sliding scale system introduced in the year 1948. It is his case that he, during all these years, had carried on the business and managed the shop allotted to him efficiently and to the satisfaction of the authorities concerned, as a result of which his licence had been renewed year after year till 1976-77. This renewal was granted by respondent No. 4, the Collector, Rohtas.

2. The petitioner states that he fell ill and was confined to bed in between 3-4-1976 and 7-8-1976, During this period the business was managed by the staff, who were directed not only to carry on the business strictly in accordance with the conditions of the licence, but also to deposit the licence fee and other charges payable to the Government under the Bihar and Orissa Excise Act and Rules. It is the case of the petitioner that during his illness, Md. Mustaq Ahmad (respondent No. 5), who is his close relation came to his shop and represented that he had been authorised by the petitioner Jamul Abdin to deposit the licence fee for renewal of the licence and also to collect the same thereafter. He took the licence and in collusion with the Excise Superintendent and other officials

concerned, manipulated and got the same transferred in his name. The petitioner, on getting information rushed to the Department concerned and on 20-8-1976 obtained certified copy of the settlement register for the year 1976-77 and could find that by an order dated 27-4-1976, vide annexure 1 of this application, the Collector (respondent No. 41) had, in fact, transferred the licence in the name of respondent No. 5 Mustaq Ahmad.

3. The petitioner has asserted that he had never authorised respondent No. 5 to act on his behalf and he had never asked for the transfer of the licence of the shop and that the impugned order dated 27-4-1976, vide annexure "1" is not legal and the same has been obtained in an unauthorised and fraudulent manner.

4. The petitioner preferred an appeal before the Commissioner of Excise, Bihar, Patna against the aforesaid order of the transfer of his licence granted in the name of respondent No. 5 and prayed for restoration of the licence to him. The Commissioner remanded the case with the observation that since the year for which the licence renewed was due to end, the Collector could consider the whole issue afresh, as raised by the petitioner before allowing renewal of the licence for the year 1977-78. A true copy of this order is annexure "2" to the writ application.

5. The petitioner not being satisfied with the orders contained in annexure 2 moved in revision before the Member, Board of Revenue, Bihar Patna, who upheld the orders passed by the Commissioner and the application was dismissed vide annexure 2/1. Thereafter both the parties i.e. the petitioner Jainul Abdin and also respondent No. 5 Mustaq Ahmad applied for renewal of the licence for the year 1977-78 in their respective favour. On 30-3-1977 the Collector withdrew the licence transferred and issued in favour of the respondent No. 5 and at the same time did not renew the same in favour of the petitioner. Against this order both the petitioner and respondent No. 5 filed their respective appeal before the Commissioner of Excise. The two appeals were amalgamated into one and numbered as appeal no 75/77 and respondent No. 3. The Commissioner of Excise disposed of the same by his order dated 13-5-1978 (vide annexure "3"). The Commissioner felt that the factum of transfer of the licence in the name of respondent No. 5 was shrouded in mystery since Jainul Abdin, the petitioner had denied that he had ever applied for transfer. It was further noticed that no such transfer petition was available on the record, The Commissioner entertained doubts with regard to the genuineness of the claim of transfer and therefore upheld the order of the Collector withdrawing the licence granted to respondent No. 5 but at the same time, the learned Commissioner further held that the Collector did not look into the claim of the petitioner and he therefore, remanded the case with a direction that the Collector will consider the claims of the petitioner before issuing any order for re-settlement of the shop in question.

6. Respondent No. 5 filed a revision against the aforesaid order (as contained in annexure "3") before the Member, Board of Revenue, who was pleased to Slav this order of the Commissioner The petitioner also filed an application for

impleading him as a party in the revision application. After hearing both the parties the Member, Board of Revenue was pleased to set aside the order of the Collector and also that of the Commissioner of Excise. Annexure 5 is the order, dated 7-9-1978 passed by the Member, Board of Revenue. It would be relevant to quote some of the extracts from the impugned order (annexure 5) passed by the Member, Board of Revenue:

I have considered the matter very carefully. The facts, I have no hesitation in saying, are rather baffling. A man who has been a licensee since 1948, gets his licence for 1976-77 renewed in March, 1977, but, three days after signing the settlement register on 31-3-1977, he files or is alleged to have filed an application for transferring the licence to his close relative Sri Mustaque Ahmad, then within a few days i.e. on 14-4-1976, he (or somebody impersonating him) along with Mushtaque Ahmad and two others, appears before the A.P.E.O. to whom the enquiry had been entrusted, prays for early disposal of the case, gets the enquiry fixed up on the next following date and, when the A.P.E.O. arrives, expresses, in the presence of all the shop employees his willingness to surrender the licence in favour of Sri Mushtaque Ahmad; but when everything has been sewn up nearly i.e. the transfer effected, the licence surrendered etc., Sri Zainul Abdin turns up and says that he had never applied for the transfer of the licence, that he was lying sick at Gaya and had never appeared before the A.P.E.O. at the time of his enquiry, that by misrepresentation, a close relative, had obtained the licence from the shop, got it surrendered and ordered in his name. Only two things are possible, either that the whole thing was a fraud and Sri Mushtaque Ahmad stage-managed it with the help of the employees, or Sri Zainul Abdin had really given his consent, but made a volte face later on and, instead of stating plainly that he was withdrawing his consent, in which case the local authorities may or may not have agreed to the restoration of his licence, spread the story of this fraud. I feel that when Sri Zainul Abdin came out with his story, the matter should have been looked into at least to be certain whether the consent, said to have been given, was truly given for, consent was the basis of the transfer, the source from which Mushtaque Ahmad derived strength, and without consent he would have had no case, atleast, not in the present form, as a transferee of the licence. However, that opportunity has been lost, and with Mushtaque Ahmad in the saddle for over a year. I doubt if it will arise again, at least not easily.

I can appreciate the Collector's predicament. He was unable to go into the matter, partly because the alleged application, said to have been given by Sri Zainul Abdin, was missing and partly because he feared that any investigation which he made would involve him into a finding on fraud which had been treated by the Excise Commissioner as "out of bounds"...Yet, when it came to the question of renewal or non-renewal he found it difficult to reach upto Zainul Abdin, because for nearly the whole of 1976-77. it was Mushtaque Ahmad who had run the shop, under a valid licence. In sheer exasperation, therefore, he seems to have thought of exercising his power u/s 43 with a view to starting from a clean slate...I, therefore, hold that the order of withdrawal, in its present

form, was bad in law. Accordingly the orders of the learned lower courts are set aside and the revision petition is allowed. This however, will not be a bar to any fresh proceeding for withdrawal of licence, if thought fit or any other action under the Excise law.

7. The petitioner contended that the aforesaid orders as contained in annexure 5 is illegal, arbitrary and against the provisions of law. As stated above, the petitioner contends that respondent No. 5 had obtained the order of transfer of the licence by playing fraud upon the Department concerned by filing a false and fabricated petition. The petitioner states that the impugned order, as contained in annexure 5 passed by the Member, Board of Revenue has finally sealed the fate of the petitioner, i.e. to say that his case will no more be considered by the Department concerned for grant of renewal of licence and the case of respondent No. 5 alone will be considered, and as such the order is unconstitutional and without jurisdiction.

8. The petitioner in this writ application has, therefore, prayed for issuance of a writ in the nature of certiorari for quashing the order dated 27-4-1976 passed by the Collector (respondent No. 4) as contained in annexure I and also order dated 7-9-1978 passed by respondent no 2 (the member, Board of Revenue) as contained in annexure 5. The petitioner has further prayed for issuance of writ of mandamus, directing the respondent to consider the case of the petitioner for renewal of the licence of the shop described as Dehri No. 1 country spirit shop and to issue a direction to the respondent to renew the licence in favour of the petitioner for the same.

9. In the counter-affidavit filed on behalf of respondent No. 5 Mushtaque Ahmad, it has been stated that since the writ petitioner was himself not able to manage the shop in question personally and also that it was being managed by this respondent which prompted the petitioner to make an application for the transfer of the licence in his favour. It has been stated that under rule 35(b) of the Bihar and Orissa Excise Rules a licensee of country spirit shop is required to personally manage the shop. It has also been stated that (he writ petitioner was holding another licence of Mastatipur country liquor spirit in the district of Gaya and he was unable to manage the aforesaid Dehri country shop No. 1 that under the order of Collector the said application which was filed on 10-4-1976 was filed on 10-4-1976 was sent for enquiry to Prakhand Vikash Padadhikari (A.P.E.O.). The writ petitioner himself appeared before the enquiring officer and admitted the fact in presence of his other staff that it was respondent, who was managing the shop for a number of years as he himself was not able to look after the business and also that the respondent being his close relation, he filed the application for transfer of the licence. The enquiring officer recommended for the transfer of the licence which was further recommended by the Superintendent of Excise to the Collector and the Collector by his order, dated 24-7-1976 as contained in annexure 1, referred to above directed the transfer of the licence in the name of this respondent. It has also been stated that the petitioner surrendered the

licence for necessary correction and his name was removed and the name of the respondent was entered into in the licence. The respondent has claimed that later on, on being instigated by some enemies, the petitioner moved another application on 16-8-1976 repudiating the fact of his earlier application for transfer and also his participation in the enquiry conducted by A.P.E.O. It has further been stated that the petitioner has admitted in the writ application that since he was lying ill he had entrusted the management of the shop to the staff and the case of the respondent is that it was being managed by him. However, the case of respondent is that the petitioner has made a false statement with respect to his illness and that the licence was obtained by the respondent by practising fraud and bringing the officials the Department in collusion. It has been stated on behalf of respondent that the whole proceeding for transfer of the licence and order passed thereto were all in a prescribed manner. It has also been stated that Commissioner of Excise in his order dated 18.3.1977 merely observed that since the licence for the year 1976-77 was to expire shortly he did not consider it proper to decide the question of validity of the order of transfer. The Commissioner observed that in absence of the original record (which was reported to be missing from the office of the Excise Superintendent) it was not possible for him to decide the conflicting question of claims of the parties and further observed that the question of such a fraud could be decided only by a criminal or Civil court of competent jurisdiction. It has also been stated that the Commissioner, in fact, did not set aside the order of transfer, as contained in annexure 1 and in the circumstances of the case, only directed the matter to be considered in the case of renewal of the licence. It has been further stated that the Collector again on 30-3-1977 while considering the case of the respondent heard the petitioner also (although the petitioner had no right to file an application for renewal) and while considering the fact of grant of renewal of the licence in favour of the respondent, the Collector purported to exercise his power u/s 143 of the Bihar and Orissa Excise Rules and passed an order for withdrawal of the licence granted to the respondent.

10. It has also been stated that the respondent instituted a Title suit in the court of the Munsif of Sasaram for a permanent injunction restraining the authorities from giving effect to the aforesaid order of withdrawal of the licence and in the meantime, the Commissioner has been pleased to grant provisional licence to the respondent, which he held till the enforcement of the policy of prohibition promulgated by the State Government in force. However, the aforesaid suit was not pressed and withdrawn It has also been stated that the question of fraud is the sheet-anchor of the case and the Commissioner of Excise has also observed that it can be decided by a criminal court of competent jurisdiction. The writ petitioner has also instituted a criminal case against the respondent and on this basis, it has been further pleaded that the question of fraud, with respect to the filing of an application for transfer of the licence cannot be gone into by this Court in the writ jurisdiction.

11. A counter-affidavit has been filed on behalf of Excise authorities also, i.e.

respondent Nos. 1,2,3,4 and 6 jointly. It has been admitted that the petitioner had been a licensee and his licence was renewed in his name for 1976-77. On 2nd April, 1976 the petitioner filed an application for the transfer of his licence in the name of respondent No. 5. However there is no record in the office of the Excise Superintendent to show that the petitioner had been holding country liquor shop since 1948. These respondents have no information about the illness of the writ petitioner and also no knowledge that he had issued instructions to his staff to look after and manage the business. The alleged fact of collusion between the Excise Superintendent and respondent No. 5 has been stoutly denied and it has been stated that the licence for the shop in question standing in the name of Jainul Abdin, the writ petitioner was transferred after holding a regular enquiry by the A.P.E.O. Dehri, who had examined a number of witnesses in presence of the writ petitioner and the transfer of the licence in favour of respondent No. 5 was ordered by the Collector, Rohtas (respondent No. 4) on recommendation of the Superintendent of Excise (respondent no 6) and the said transfer was on the application of the petitioner, who had attended the enquiry. Competitive claims have been put by both the parties for the liquor shop in dispute. The claims are rather conflicting. There is mud-slinging by one over other. The petitioner speaks that respondent No. 5 got the licence transferred and renewed in his name by practising fraud and bringing the men of the Excise Department in his collusion. Respondent No. 5, on the other hand, speaks that the transfer is valid and legal on a proper application filed by the petitioner himself. It is unfortunate that the application for transfer, which appears to be the sheet-anchor of the contention raised on behalf of the respective parties is not on the record. It appears to have been removed. In such a situation the Commissioner of Excise in his order, as contained in annexure 2 (which is an order in appeal) against the initial order contained in annexure 1, has rightly observed that the correct judgment on such issue can be passed only after recording evidence of witnesses of both sides and examining documentary evidence, if any, and that this is a matter, which only a competent court of criminal or civil jurisdiction can perform. I too feel that this Court cannot be converted into a court of enquiry for recording evidence and giving a decision of "fraud" while disposing of the application under writ jurisdiction, inasmuch as, the facts in dispute are controversial, which also touches the maintainability of this application. To get rid of this situation, Counsel for the petitioner Mr. Mishra with all ingenuity has canvassed at the bar that the impugned order contained in annexure "1" is not in conformity with the statutory obligation, it has been submitted that the Collector, in fact, failed to record his satisfaction and reasons thereof while allowing the application for transfer as envisaged under rules 143 and 144 of the Bihar and Orissa Excise Rules. It has been argued that the obligation having been not discharged, as according to law, this Court must interfere to bridle such administrative order of the Collector which is shorn of judicial norms. Mr. Mishra on the question of maintainability of this writ application has submitted that the impugned orders, as contained in annexure 1 meets with civil consequences and as such it must be deemed to be a quasi

judicial order. While making this submission the learned Counsel has referred to rules 143 and 144 of the Bihar and Orissa Excise Rules with respect to the transfer of licence. Rule 143 says that "no transfer of a licence shall be made except with the previous permission of the Collector."

Rule 144 reads as follows:

The Collector shall not allow such transfer, or sub-lease, unless good and sufficient reason be shown to his satisfaction, and unless the transferee or sub-lessee is, in his opinion, fit and qualified to hold such licence.

12. The proceeding in question with respect to the earlier order, as contained in annexure 1 concluded under the orders of the Excise Commissioner on 18-3-1977 and by the Member, Board of Revenue on 12-4-77. This was independent of the proceeding, which was before the Collector, which ended on 22-4-1976. It has been argued that the right of adjudication has been denied to the petitioner, which is an imperative right. This being a quasi-judicial proceeding, Collector should have recorded his opinion. He is required to apply his mind to the facts of the case and record reasons for his satisfaction. It was conceded by Sri Mishra that it was not required in the present case to grant personal hearing for the adjudication of the claim of the petitioner, but that does not absolve the Collector of the responsibility of recording reason for passing such an order under rule 144 of the Excise rule. This is a statutory obligation on the part of the Collector to record not only his satisfaction, but also the reasons for such satisfaction. Justice requires that such reasons are to be recorded in quasi-Judicial function even if, there is m law. It has further been argued that a situation may arise that the Collector may have some reports before him on which he may record his satisfaction for passing an order under rule 144. There may not be any form of enquiry, but nonetheless he could pass such orders only when there is some material on the record to show that the Collector applied his mind to some of such facts, which prompted him to take action under rule 144 of the Bihar and Orissa Excise Rules.

13. It has been urged that the order of the Collector, as contained in annexure 1 falls short of such requirement and therefore, it must be struck down. Before I proceed to dispose of this issue raised at the Bar, it would be relevant to mention here that annexure "I" is in fact, a recommendation made by the Superintendent of Excise (respondent No. 4) to the Collector for transferring the licence in favour of respondent No. 5. The petitioner in his supplementary affidavit has attached the impugned order of the Collector, which is annexure "8", The entire orders contained in annexure "8" is the same as that of annexure "1" containing the recommendation for transfer of the licence in question. However, in annexure "8" there is a signature at the end of one Sri S.P. Sinha, who was then Collector. In the rules of the business, it has been pointed out that putting the signature at the end by the Collector on such recommendation and notes for transfer of the licence amounts to giving acceptance of the recommendation and thereby the licence stands transferred in the name of respondent No. 5 and this order has

been challenged More this Court. I would be just repeating the argument of Mr. Mishra that ho has pointed out that the Collector has merely put his signature and in fact has not applied his mind to the facts of the case nor has he passed any reasoned order for transferring the licence of the shop in question in favour of the respondent no 5. In other words, it has been contended that the Collector has not shown any reason for his such satisfaction in passing the impugned order and as it offends the principle of natural justice it cannot be sustained,

14. The Supreme Court in the case of Simons Engineering and Manufacturing Company of India Ltd. v. the Union of India AIR 1969 S.C. 1785 has laid down the basic principles of natural justice and that the quasi-judicial orders must be supported by reasons It has been hold as follows:

It is now settled law that where an authority makes an order in exercise of a quasi Judicial function, it must record its reasons in support of the order it makes. Every quasi judicial order must be supported by reason. The rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it cannot satisfy the requirement of law.

15. Testing the present case on the anvil of the basic principle of "natural justice" and/or mat quasi-judicial order must be supported by reasons, two factors have to be borne in mind. At the first stage, so far as annexure "1" is concerned (better say annexure "8") which contains the order of respondent No. 4, it has been shown that the Collector has merely put his signature. There is no dispute of the fact that putting such a signature on such report or recommendation amounts to acceptance of the recommendation. Sri Sreenath Singh learned Counsel for respondent No. 5 has urged that admittedly annexure "1" containing the detailed facts of the case was placed before the Collector, and for all practical purposes, it must be said that he examined the recommendation, applied his mind to the facts of the case and then put his signature. To my mind there is much force in this submission. It is difficult for me to read in annexure "8" which is a para materia to annexure "1" that the Collector did not apply his mind to the facts of the case before putting his signature or in other words in passing the impugned order giving effect to the transfer of the licence in favour of the respondent.

16. A second factor, as pleaded at the bar is that the Collector, in fact, did not record reasons for his satisfaction, while passing the order. Of course, in rebuttal, it has been contended by Sri Sreenath Singh that for all practical purposes again it should be held that the Collector adopted the reasons mentioned m annexure "8" as his own reasons and on being satisfied thereon he affixed his signature thereto. It therefore, cannot be said that the Collector has not recorded "his satisfaction" in passing the aforesaid order, though technically he did not mention reasons thereof and merely affixed his signature. It may be noticed here that rule 144 of the Excise rules does not put any statutory obligation to record

the reasons of the satisfaction of the officer concerned in passing any order. But as stated above, that in a quasi-judicial proceeding, every order must be supported by reasons. Rule 144 does not impose any express obligation to record reasons of satisfaction. Whether in the present case omission to give reasons will make the order illegal, in the case of *Som Datt Datta Vs. Union of India (UOI) and Others*, the Supreme Court has said that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, it cannot be said that there is any general principle or any rule of natural justice that a statutory tribunal should always and on every case give reasons in support of its decision. Such orders cannot be therefore, held to be illegal for not giving any reason for conforming the orders of the court in every case. Therefore, each case has to be judged independently to find out whether absence of recording reasons in passing an order offends the principle of natural justice and whether every such order becomes illegal, [must say that there cannot be a set of rules on this score which may with lock, stock, and barrel apply in all cases. So far as the instant case is concerned, admittedly there is no statutory obligation on the part of the Collector to record reasons, but nonetheless, it is a case in which I am fully inclined to accept the submissions of Sri Shreenath Singh, learned Counsel for the respondent No. 4 that the Collector considered the reasons recorded therein by the Excise Superintendent in his recommendation in annexure "8" which prompted the Collector to put his signature and thereby he has adopted "the reasons" as his own in passing the order. Thus there is no infirmity therein. Consequently the direction contained in the two orders (annexures 2 and 2/1) is will justified and the Collector has been rightly required to hear the parties and consider their cases while deciding the question of renewal of the licence for the next year.

17. Coming to the next phase of the argument made on behalf of the petitioner, it is true that the petitioner was not heard by the Collector but that too in my opinion will not offend the principle of "*audi alteram partem*" in the present case. One has to catch and get the grip when the laws on the formulae of natural justice is to be mooted out. In the instant case there was an application on 27-4-1976 for transfer of the licence, which was allowed by the Collector. As the case stands, this application was purported to have been filed by the petitioner Jainul Abdin. So, how can the petitioner complain of the violation of natural justice. He was not an aggrieved party then. He becomes an aggrieved party some time later when he challenged the impugned order of the Collector in appeal by stating that he had not filed such an application. Therefore, testing the impugned order as contained in annexure "1" annexure "8") with respect to both the factors I am not inclined to hold that it is violative of the principle of natural justice or it offends any statutory obligation laid down under rule 144 of the Excise Rules.

18. It may also be relevant to mention here that in the appeal before the Commissioner the petitioner did not agitate the question of absence of reasoning of the Collector's order. In fact, there was no dissatisfaction on this score at

earlier stage. I have ray doubts if the writ petitioner can be permitted to agitate this issue and challenge the order today when it was not done earlier at any stage.

19. Proceeding further in the case it has been pointed out that the appellate authority refused to set aside the order continued in annexure 1 (annexure "8") as the petitioner Jainul Abdin could not show to the satisfaction of the appellate Court that any forgery was committed. It was more so, because the records were missing and appellate Court held that this issue could well be decided by some competent Court of either civil or criminal jurisdiction. The petitioner did not agitate before the appellate authority that he was not given opportunity to make a complaint with respect to forgery before the Collector.

20. It is also important to note that the appellate authority, in fact, did not interfere with the orders contained in annexure "1", The Excise Commissioner, vide annexure "2" in appeal, only directed the Collector to take up the question of renewal of the licence and nothing beyond, The petitioner on being dissatisfied went in revision before the member, Board of Revenue, who also while disposing of the application vide annexure 2/1 observed as follows:

In any event the licence expired on 31st March, 1977 and for settlement for the current year the learned Excise Commissioner drew the attention of the Collector, Rohtas to the facts incorporated in his order. Since the licence in question expired on 31st March, 77 and there is no material available to examine whether fraud has been committed or not, I agree with the learned Excise Commissioner that the proper forum to agitate that fraud has been committed upon the petitioner would be either a criminal Court or a civil jurisdiction. For the reasons assigned above, the revision petition is summarily dismissed.

21. Thus, it is abundantly clear that the order of the Collector as contained in annexure "1" in substance merged into the orders passed in appeal by the Commissioner of Excise and finally in revision by the Member, Board of Revenue, vide annexures 2 and 2/1 respectively. I could not understand why the writ petitioner is not complaining about the other two orders us contained in annexures 2 and 2/1. I rather feel that annexure 1 cannot be quashed independently as the orders contained therein cannot be taken out from the two orders vide annexures 2 and 2/1 as a juice of orange. It is rather a case that both the suitors, i. e. the petitioner and the respondent No. 5 made applications for the renewal of the licence" which they are claiming in their independent capacity and the Collector after hearing both the parties passed the order on 30-3-1977 u/s 43(b) of the Bihar and Orissa Excise Act and by this order he withdrew the licence. This is his administrative approach. Again there is no complain before us in this writ application for rehabilitating and restoring the suitors against the administrative order of the Collector. Of course, in substance, it may be said that the order of withdrawal of the licence, to some extent, is in disobedience of the direction given to the Collector as per annexures 2 and 2/1.

22. Here another chapter of the story begins. Facts have already been enumerated above. It was on 30-3-1977 that the Collector withdrew the licence. Against this order of the Collector, both the petitioner and respondent No. 5 again filed an appeal before the Commissioner of Excise. As stated above both the appeals were amalgamated and were numbered as appeal No. 25/77. It was on 13-5-1978 that the Commissioner of Excise while disposing of the appeal, held that the order of the Collector withdrawing the licence of the shop was a justified order, but at the same time remanded the case with a direction that the Collector will consider the claim of the petitioner Jainul Abdin while issuing order for re-settlement of the shop. This order is contained in annexure "3" of the writ application. Against this order respondent No. 5 Mustaque Ahmad filed revision before the Member, Board of Revenue. The Member while disposing of the revision application vide annexure 5 observed as follows:

I therefore, hold that the order of withdrawal in the present form was bad in law. Accordingly the orders of the learned lower courts are set aside and the revision petition is allowed. This however, will not be a bar to any fresh proceeding for withdrawal of the licence if thought fit or for any other action under the Excise law.

It has also been observed by the Member, Board of Revenue in the impugned order that inability to decide the connected issue of fraud as contended between the parties cannot be deemed to be a good ground for ordering withdrawal of the licence u/s 143 of the Bihar and Orissa Excise Act. It was also observed that the reasons should have been more positive one, so a misrepresentation or absence of consent from the original licence, should have been proved with respect to his statement, as well as some such corroborative evidence which respondent Mustaque Ahmad could give, if he so wanted to contest.

23. It has already been shown that the petitioner has challenged the validity of this order also as contained in annexure 5 along with annexure 1. I have said that the order of withdrawal of the licence by the Collector appears to be in disobedience of the earlier direction, as contained in annexures 2 and 2/1. A similar view has been taken by the Member, Board of Revenue in his order, vide annexure 5. Of course the Member, Board of Revenue further observed that there is no bar for the Collector to take a fresh proceeding for withdrawal of the licence, if thought fit or any other action under the Excise law. In other words, I do not find any conflict in the earlier two orders as contained in annexures 2 and 2/1 and annexure 5. There is no prayer on behalf of the writ petitioner for quashing annexures 2 and 2/1. But however, the petitioner has prayed for quashing annexure 5. Since the orders contained in annexure 5. In substance, is similar to those in annexures 2 and 2/1, I do not find any ground to quash annexure 5 as well. In this order (annexure 5) the Member. Board of Revenue has, however, said that there is no bar to any fresh proceeding for withdrawal of a licence by the Collector, No body disputes the proposition. The Collector is of course, within his right to initiate a proceeding u/s 43 or the withdrawal of a

licence in the circumstances, as laid down u/s 42. However, this observation by the Member Board of Revenue in annexure 5 is just an obiter-dicta. It is nobody's case that Collector cannot withdraw a licence. This is a case in which the licence has expired due to efflux of time. The question of withdrawal arises only in a case where licence subsists and is pending and not in a case where the licence has expired. The summum bonum of the decision (annexure 5) is the order of withdrawal passed by the Collector on 30.3.1977 has been held to be bad in law and this relegates the parties to the earlier position, i.e. to say, to the position where the directions contained in annexures 2 and 2/1 stand. The Collector is therefore required to hear the parties and consider their respective cases in regard to the renewal of the licence for the next year. To conclude it must be held that there is no merit in this application and. I do not find justifiable grounds to interfere with orders contained in any of the annexures under challenge.

24. In the result, the application is dismissed. There shall be no order as to costs.

Birendra Prasad Sinha, J.

25. I agree.