(2009) 02 OHC CK 0011

In the Orissa High Court

K. Narayan Rao and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 42

Citation : (2009) 107 CLT 638 : (2009) 1 OLR 874 Supp

Hon'ble Judges : P.K. Tripathy, J;L.K. Mishra, J

Bench : Division Bench

Judgement

1. Heard further argument and the Judgment is as follows.

2. Petitioner in W.P.(C) No. 10837 of 2008 inter alia challenges the show cause notice, Annexure-11 series issued, by which the Superintendent of Excise, Gajapati has asked to show cause as to why the licenses granted to operate outstill liquor shops at Parlakhemundi Zone No. 1, Parlakhemundi Zone No. 11, Uppalada, Rayagada, Garabandha, Kasinagar, Hadubhangi, Ramgiri and Cheligada be cancelled for breach of the conditions of the licenses.

3. Petitioners in W.P.(C) Nos. 11584 of 2008 and 12912 of 2008 have applied to this Court to direct the Sate Government to stop the practice of centralized outstills or single point outstills of outstill liquor in the district of Gajapati, besides making other grievance on the Excise Policy of the State Government and relating to the unemployment problem. However, in course of hearing, submission is made relating to issue of direction to the State to stop the practice of centralized outstills and/or single point outstills of outstill liquor in the district of Gajapati.

4. The licensee, i.e. the Petitioner in W.P.(C) No. 10837 of 2008, inter alia, contends that the Superintendent of Excise, Gajapati has no jurisdiction and legal authority to issue notice to show cause in view of the provision in Section 22 read with Section 42 of the Bihar and Orissa Excise Act, 1915 (hereinafter referred to as "the Act"). In that respect, the Opposite Parties, i.e. the State and

its officers in the Excise Department and the Collector, Gajapati have filed a counter signed by the Superintendent of Excise, Gajapati. In the entire counter, the legal contention raised by the Petitioner is not directly replied but it is stated by the Superintendent of Excise that "as the licensee are carrying on their business in violation of the Excise Policy as well as the Act and the Rules and in contravention of their own undertaking, the Excise Superintendent getting no other alternative issued the show cause notice dated 29.06.2008 under Annexure-11 asking to show cause as to why the licenses shall not be cancelled for the violation of the aforesaid Rules and Policy. The aforesaid action of the deponent has been approved by the collector, who is the authority under the Act to issue license and to take appropriate action in respect of any violation." Though a bunch of documents have been annexed as Annexures A/3 to C/3, but no document has been filed by the State to show that the show cause notice was issued on the direction of the Collector. Therefore, the aforesaid averment does not make any sense to confer jurisdiction with the Superintendent of Excise to issue show cause notice.

5. In course of submission, Mr. Pal, Learned Counsel for the Petitioner in W.P.(C) No. 10837 of 2008 invites our attention to the case of Chaitram Vs. Superintendent of Excise and Others, , in which the matter relating to cancellation of license by the Collector was considered by this Court with reference to Sections 22 and 42 of the Act and it was held by this Court that the Collector has no jurisdiction and authority to cancel a license granted by the State u/s 22 of the Act. In that context, Miss Ratho, Learned Counsel for the Petitioners in W.P.(C) No. 12912 of 2008 and W.P.(C) No. 11584 of 2008 invites our attention to Notification No. IEX-11/ 2001-3308/Ex. Dated 26.5.2001. That Notification reads as under:

Government of Orissa, Excise Department Notification

No. IEX-11/2001-3308/Ex.Dated Bhubaneswar, the 26.5.2001

In exercise of the powers conferred by Clause (e) of Sub-section (2) of Section 7 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915) the State Government do hereby delegate to the Collector of the district the powers to grant exclusive privilege of selling in retail country liquor under Clause (c) of Sub-section (i) and foreign liquor under Sub-section (1-a) of Section 22 of the said Act to any person if the bid amount or the negotiated amount, as the case may be, offered by such person is equal to or more than the reserve price of consideration money of the shop.

Sd/- Commissioner-cum-Secretary to Government.

Accordingly, she submits that in view of the delegation of power u/s 7(2)(e), the powers and function of the State u/s 22 of the Act has been delegated to the Collector and therefore, the Collector is the competent authority to deal with the condition of license both for granting it and for its suspension or cancellation. It may be noted here that the dispute at present is not of the jurisdiction of the

Collector but of the jurisdiction of the Superintendent of Excise to issue the show cause notice u/s 42 of the Act.

6. Mr. Pal also relies on the case of Nilamani Sahu v. State of Orissa and Ors., a decision of the Division Bench of this Court on 29.7.1996 in O.J.C. No. 2116 of 1995. In that case issue of show cause notice by the Collector was challenged on the same ground as in the case of Chaitram (supra) and following the same ratio, it was held that the Collector has no jurisdiction to issue show cause notice. At this stage, we may mention that in view of the above quoted notification delegating the power to the Collector, this ratio may not be of any relevance. Apart from that, as noted earlier, in this case, we deal with the jurisdiction of the Superintendent of Excise to issue the show cause notice.

7. Learned Addl. Standing Counsel, in course of his submission, admits that though the Superintendent of Excise has no power or jurisdiction to issue show cause notice, yet the action of the Excise Superintendent, Ganjam has protection of the order of approval of the Collector and therefore, the show cause notice, Annexure-11 in W.P.(C) No. 10837 of 2008 is not without jurisdiction and the Petitioner be asked to file his show cause reply and to participate in the hearing of the show cause. On a similar fact situation of approval granted by the State Government to the show cause notice issued by the Collector in the case of Chaitram (supra), a post facto approval of the action of the Collector was not approved by this Court with the comment that the post facto approval does not confer jurisdiction to issue notice to show cause. The same principle is liable to be followed and following that principle, we held that the show cause notice issued by the Excise Superintendent is without jurisdiction.

8. On an analysis of the legal position and the submission of the parties as noted above, we find that the notice to show cause, Annexure-11 series issued by the Excise Superintendent, Paralakhemundi is without jurisdiction and accordingly, the same is quashed. However, it does not prevent the competent authority u/s 22 read with Section 42 of the Act to proceed against the Petitioner in accordance with law. While doing so, or in the matter relating to grant of license in future, the grievance ventilated by the Petitioners in W.P.(C) No. 11584 of 2008 and W.P.(C) No. 12912 of 2008 be examined strictly in accordance with law before taking any decision.

9. Accordingly, all the three Writ Petitions are disposed of. There shall be no order as to cost.

