(2004) 08 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3231 of 2003

Kamlesh Kumar Sinha APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22D
Constitution of India, 1950 — Article 226

Citation : (2005) 2 BC 256 : (2004) 4 JCR 122

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Dilip Jerath and S.N. Prasad, for the Appellant; R.A. Gupta, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner against the order dated 19th June, 2003 passed by the Excise Commissioner, Jharkhand, whereby and whereunder the petitioner''s claim for grant of exclusive/ special privilege for manufacture and wholesale supply of County Liquor for the period 2002-2005 in Dhanbad zone has been rejected and communicated.

Petitioner has also prayed for direction on the respondents to issue necessary orders in his favour granting exclusive privilege for manufacture and wholesale supply of Country Liquor in the Dhanbad zone.

2. The brief fact of the case is that the respondents issued one tender notice on 12th January, 2002 calling for application for manufacture and wholesale supply of Country Liquor within the State of Jharkhand for the period from 1st April, 2002 to 31st March, 2005. The petitioner applied for grant of exclusive/special privilege for manufacture and wholesale supply of Country Liquor for the Dhanbad zone. According to petitioner, his application was approved by Member, Board of Revenue in consultation with the Excise Commissioner, Jharkhand and

Deputy Commissioner of Excise, Jharkhand, Ranchi but no necessary order was passed. Subsequently, the Excise Commissioner, Jharkhand Ranchi by its letter No. 776, dated 5th July, 2002 directed the petitioner to produce certain documents and asked him to provide certain informations, such as (1) the amount deposited in the petitioner''s account with the Punjab National Bank, Gandhi Nagar Branch, Patna, as on 14th February, 2002 in support of his financial capability and the certificate granted by the Punjab National Bank, Gandhi Nagar Branch, Patna, (2) whether the amount deposited by petitioner in the Bank has been shown in the income tax clearance certificate or not and (3) what is his regular income and source of income. The petitioner submitted the relevant documents and also given information as was sought for.

Further case of the petitioner is that the Excise Commissioner approved his candidature by his note dated 2nd August, 2002 which was also confirmed by the State Minister by his note dated 6th August, 2002. In spite of such approval, no order having been passed in his favour, he had to move before this Court in WP (C) No. 5710 of 2002 for grant of exclusive/special privilege. A bench of this Court vide its order dated 10th December, 2002 directed the Excise commissioner, Jharkhand to determine the petitioner''s claim, the writ petition was disposed of with such direction. But, thereafter, no decision having been taken within the time scheduled by the Court, the petitioner had to prefer a petition before this Court for initiation of proceeding for contempt of Court, being M.J.C. No. 310 of 2003. In the meantime, the Excise Commissioner, Jharkhand by a notice dated 5th October, 2002 asked the petitioner to clarify certain points and to submit proof relating to financial capacity to find out whether he is financially sound or not. The petitioner submitted his reply on 24th October, 2002.

3. According to petitioner, the Member, Board of Revenue, in the meantime, by its note dated 19th February, 2003 opined that since the matter relating to grant of exclusive/special privilege to petitioner had not been discussed by the Excise Commissioner or the Deputy Commissioner of Excise and the petitioner was found eligible on the basis of documents available on record, petitioner''s tender cannot be rejected.

The grievance of the petitioner is that in spite of such specific observation of Member. Board of Revenue and the fact that the petitioner complied with each and every condition as per tender notice for determination of his financial capacity, the State of Jharkhand resorted to extraneous consideration and on frivolous ground rejected his claim by impugned order dated 19th June, 2003.

4. Counsel for the petitioner submitted that the respondents cannot travel beyond the terms and conditions as mentioned in the tender notice. Extraneous reasons beyond the terms and conditions of the tender notice amounts to abuse of power.

5. It is not in dispute that the State Government has power to impose various stringent conditions for grant of exclusive/ special privilege. In the present case,

the respondents laid down certain conditions in the tender notice dated 12th January, 2002 such as, at the time of application, (i) the tenderer was to mention the area for which the application is given, (ii) he was to attach a detailed and clear project report relating to installation of machineries and infrastructure for supply of Country Liquor in sachet/bottle; (iii) in the project report, the area of supply, capacity of sachet-ting/bottling plant was to be mentioned and (iv) for supply of Country Liquor in sachet/bottle, the expenditure against different heads was required to be mentioned. It was also mentioned that for each area, if application is filed, the tenderer will have to submit separate finance availability certificate of Rs. 35 lacs each from a Nationalised/Schedule Bank in the Format Annexure-4. The applicant was also required to mention from where he will arrange finance and machineries. It was also stipulated that if the finance is arranged from personal source or taking loan, in such case, the applicant is required to enclose relevant documents in support of such claim. If the applicant intends to take loan, then he was required to produce a certificate that the loan will be given without any pre-conditions, etc.

6. According to petitioner, he is a resident of Gandhi Road, Dhanbad and is engaged in the transport business running in the name and style of Bicky Transport and Commission Agent, and he derives his regular income from the said transport business. He has a Bank account with the Punjab National Bank in which there is a balance of Rs. 35.16 lacs as on ''14th February, 2002. He has sold a piece of land situated at Kadam Kuan, Patna for a total consideration amount of Rs. 45 lacs and received a sum of Rs. 35 lacs as advance money which has been deposited in the Bank account. He has filed tender paper within time with all relevant documents and he is financially sound to do business. In case, the petitioner is granted tender, the State would earn about Rs. 4.80 crores per annum in the shape of Excise Duty and other taxes. He having fulfilled every terms and conditions of tender notice, there was no occasion for the respondents to reject his claim.

The petitioner initially raised jurisdiction of Member Board of Revenue and the Excise Commissioner, Jharkhand to decide the question of grant of exclusive/ special privilege u/s 22-D of the Excise Act but such issue was not pressed by the counsel for the petitioner in view of judgment rendered by this Court in the case of Spicy Beverages Pvt., Gandhi Road, Dhanbad v. State of Jharkhand, WP (C) No. 2379 of 2003, delivered on 10th September, 2003, wherein the Court held that the member, Board of Revenue has Jurisdiction to grant privilege u/s 22-D of the Bihar Excise Act, 1915.

7. In this case, the only question arises for consideration is whether the ground shown in the order of rejection contained in letter No. 683 dated 19th June, 2003 is arbitrary, discriminatory and illegal or not.

From the order of rejection contained in letter No. 683, dated 19th June, 2003, it will be evident and not disputed by the petitioner is that the petitioner has shown the following gross income and the amount paid towards income tax.

---------------------------------- Year Gross Income Amount of Income Tax paid ---------------------------------- 1998-1999 Rs. 40,850/- Rs. 85/- 1999/2000 Rs. 50,450/- Rs. 45/- 2000-2001 Rs. 50,589/- Rs. 54/- 2001-2002 Rs. 50,510/- Rs. 51/- ----------------------------------- Subsequently when the enquiry relating to financial position of petitioner was made, the petitioner submitted a fresh return for the year 2001-2002 on 23rd December, 2002 (much after the closure of tender) showing income of Rs. 1,20,500/-and paid income tax of Rs. 14,698/- by a challan dated 20th December, 2002. This was also affirmed by the Office of Income Tax Commissioner. So far as Bank account is concerned, it is only after issuance of the tender notice, the petitioner made an agreement on 15th February, 2002 for sale of a house at Patna for consideration of Rs. 45 lacs. Therein, it was shown that a sum of Rs. 35 lacs has been given as part of the consideration amount i.e. Rs. 8 lacs received on 15th January, 2002 Rs. 4 lacs received on 18th January, 2002; Rs. 5 lacs received on 20th January, 2002; Rs. 8 lacs received on 23rd January, 2002; Rs. 5 lacs received on 5th February, 2002 and Rs. 5 lacs received on 10th February, 2002. That means the petitioner tried to accumulate fund after issuance of tender notice.

8. There is nothing on the record to suggest that the aforesaid sale has reached finality and the petitioner has received the total consideration amount of Rs. 45 lacs. It further transpires from the record enclosed with the writ petition that the Income Tax Officer of Ward No. 1 (4), Dhanbad has given a clearance certificate on 13th February, 2002, wherein Rs. ''zero'' has been shown as wealth tax paid by petitioner for the year 1997-98 to 2001-2002. In the current account of the Bank, though a sum of Rs. 35,16,000/- shown as on 15th December. 2002, but the Bank has given a ''conditional certificate'' that the Bank may provide loan of Rs. 50 lacs, if the authority grants exclusive/special privilege in favour of petitioner. The Excise Commissioner, Jharkhand noticed the aforesaid facts and taking into consideration Clause-2 (Gha) of the tender notice relating to financial capacity of an applicant, rejected the claim of petitioner being not financially sound.

In a similar case of Lakhan Lal Vs. The State of Bihar and Others , a Division Bench of the Patna High Court by its judgment dated 5th April, 2000 rejected the claim of said petitioner taking into consideration the report relating to financial capacity of said petitioner to run the business. In the said case also, the petitioner, Lakhan Lal deposited an amount of Rs, 1,02,00,000/- as security amount by cash. The State Government through the Excise Commissioner made enquiry relating to source of Rs. 1,02,00,000/-. In a report, the Chief Secretary mentioned that the petitioner of the said case could not give clear cut answer as to how all of a sudden he came in possession of a sum of Rs. 1,02,00,000/-. It was found that the Bank transfer has been done so as to prop-up the account of the said petitioner. In the said case also, his prayer for grant of special privilege was rejected which was upheld by the Division Bench of the Patna High Court.

9. I, therefore, hold that in terms with the conditions laid down in the tender

notice and with a view to find out whether the special privilege can be granted or not and to ascertain whether an applicant is financially sound or. not, the competent authority has jurisdiction to enquire and if an applicant is not sound financially, it is always open to the competent authority to reject the claim.

In the facts and circumstances and for the grounds as mentioned in the impugned letter dated 19th June, 2003. I find no case is made out to interfere with the impugned order dated 19th June, 2003. There being no merit, the writ petition is dismissed.