(2005) 07 PAT CK 0053

In the Patna High Court

Case No : CWJC No. 5507 of 2005

Kaushal Kishore Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 45, 89
Constitution of India, 1950 — Article 19(1)(g), 226

Citation : (2005) 3 PLJR 646

Hon'ble Judges : J.N. Bhatt, C.J;Nagendra Rai, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi and Syed M. Ashraf, for the Appellant; R.K. Dutta for the State and M/s Y.V. Giri and Rajen Sahay for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

1. This application under Article 226 of the Constitution of India has been filed for quashing the advertisement dated 23.3.2005 published in the daily newspaper ''Hindustan'' for settlement of Indian Made Foreign Liquor (hereinafter referred to as ''I.M.F.L.'') wholesale licence in the district of Saharsa for the year 2005-06 and the settlement made in favour of respondent No. 5 Diwakar Singh. The challenge to the advertisement and the settlement has been made on the ground that though in terms of the advertisement (Annexure-1) published on 23.3.2005, the application in the prescribed form was to be submitted within 15 days, the authority before the expiry of the said period made settlement in favour of respondent No. 5, thus, depriving the petitioner''s right to participate in the settlement of IMFL sale to trade licence.

2. The case of the petitioner is that though in the advertisement it was mentioned that the application was to be made within 15 days, it was also mentioned that the settlement would be made on 29.3.2005. In view of the aforesaid contradictory terms in the advertisement, the petitioner approached

the Superintendent of Excise, Saharsa on 28.3.2005 and he was informed that the last date for filing application has already expired. Thereafter, the petitioner enquired as to what happened to the settlement and then he was informed that the settlement has been made on 4.4.2005. He also came to know that there were four applicants for the settlement, out of which applications of three were rejected and the settlement was made in favour of respondent No. 5. Consequently, the petitioner made a representation on 6.4.2005 (Annexure-3) but the authorities did not pay any heed. Hence the writ application.

3. The stand of the respondent-State and respondent No. 5 is that the Collector, Saharsa had requested the Director General Information and Public Relations vide his letter dated 12th March, 2005 which is 15 days before the date of settlement (29th March, 2005) and as such there was no confusion in the advertisement. Thereafter, the advertisement was made and in pursuance of the advertisement, four persons submitted their applications and the Collector having found respondent No. 5 suitable in all respects made the settlement in his favour on 4.4.2005. Thus, according to the stand of the State and respondent No. 5, the settlement has been made in terms of the advertisement and no favour has been shown to respondent No. 5.

4. No doubt, right to trade in excisable articles is not a fundamental right and the Government has power to regulate, restrict or totally prohibit the excisable articles and the same will not violate the provision of Article 19(1) (g) of the Constitution of India, but the State Government while making the settlement has to act in a fair and just manner and Cannot issue an advertisement in such a way so as to create confusion and deprive the desirous applicants to be deprived of their participation in the process of settlement.

5. The advertisement issued in this case is contradictory and confusing. It fixes 29th March, 2005 as a date of settlement and at the same time it further provides that the application is to be made within 15 days from the date of advertisement, i.e. 23.3.2005. In other words, the last date for filing the application was 6th April, 2005 and as such any person after reading the same may be misled as to the last date for filing the application. The petitioner''s assertion is that he was misled by the said fact in the advertisement cannot be brushed aside specially when admittedly the settlement was not made on 29th March, 2005 as mentioned in the advertisement, but it was made on 4th April, 2005. Thus, because of the confusing nature of the terms of the advertisement, the petitioner was deprived of an opportunity to participate in the process of settlement and as such the petitioner has been able to make out a case in his favour.

6. However, the fact remains that the settlement has been made in favour of respondent No. 5 and more than three and half months have passed and it is asserted on behalf of respondent No. 5 that he has spent a huge money after the settlement made in his favour. In such a situation the equitable consideration has a role to play and thus this court has to consider as to whether on the ground as

found, the settlement made in favour of respondent No. 5 for the year 2005-06 should be cancelled or he should be given protection for at least one year, the period of settlement.

7. Section 45 of the Bihar Excise Act, 1915 provides that no person to whom any licence has been granted under the Act shall have any claim to the renewal of such licence. Rule 44 of the Rules framed by the State Government u/s 89 of the Act provides inter alia that the licences for the wholesale or retail vend of excisable articles may be granted for one year, from the 1st April, to the 31st March, It further provides that the wholesale licences for the supply and sale of excisable articles may be granted for any numbers of years not exceeding five, as the Board may decide in each case. Thus, under Rule 44 of the Rules, a licence has to be granted for one year and subject to renewal for any numbers of years not exceeding five.

8. Taking into consideration the special facts of the case where the petitioner has made out a case in his favour and respondent No. 5 has also made out a case for continuance of the settlement for the year 2005-06 in view of the investment we have to adjust the equity in such a way that none of the parties should suffer for the reasons for which they are not responsible.

9. Accordingly, let the settlement made in favour of respondent No. 5 continue for one year expiring on 31st March, 2006. There should be a fresh advertisement for the settlement for the next year so that all desirous applicants may get an opportunity to participate in the process of settlement. In the result, the writ application is allowed in part with aforesaid directions.