(1990) 12 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3730 of 1990

Kishun Chaudhari @ Kishun Pasi — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1991) 1 BLJR 386 : (1991) 1 PLJR 590

Hon'ble Judges : Sachchidanand Jha, J;Nagendra Prasad Singh, J

Bench : Division Bench

Judgement

Sachchidanand Jha, J.—This writ application under Articles 226 and 227 of the Constitution of India has been filed for quashing the settlement of toddy (tari) shop in favour of respondent No. 4 and also for a direction to resettle the same with the petitioner for the year 1990-91.

2. According to the petitioner, he has been running the toddy shop in question in village Kunila within Akbarpur Police Station of the district Nawadah for the last 20 years on the basis of licence No. 246 which was renewed from year to year upto 1989-90. A sum of Rs. 1,800 was deposited with the Assistant Sub-Inspector of Excise for settlement of the shop in his favour. On inquiry, however he learnt that the shop has been settled with respondent No. 4 Chando Choudhary No. 1.4.1990 on the basis of some auction. The petitioner has made a grievance that the settlement has been made in favour of respondent No. 4 in a secret manner without giving any opportunity to the petitioner or any other persons to participate.

3. It appears from the submissions made on behalf of the petitioner that the toddy shops in the State of Bihar are being settled without following the procedure prescribed under the Bihar Excise Act, 1919 (hereinafter referred to as ''the Act'') and the rules framed thereunder and also without holding any proper auction, almost like renewal of the licenses from time to time, in favour of the same person. The petitioner himself has claimed to have been taking the

settlement of the shop in question for last about 20 years on the basis of renewal of his licence. This, in my opinion, reveals a state of affairs which is not only inconsistent with law but also against the revenue.

4. The settlement of toddy shops is like any other grant of a largesse or award of contracts or issuance of licences by the State, It is too late in the day for anybody to suggest that such settlement can be made by the government or its functionaries in an arbitrary manner and at their sweetwill. It should be in conformity with certain norm which is not arbitrary, irrational or irrelevant.

5. The settlement of toddy shops is made under the Bihar Excise Act. Toddy (tari) is included in the definition of ''liquor'' u/s 2(14) of the Act. The provisions contained in Chapter VI of the Act relating to licences in respect of retail sale of liquor meant for consumption on the vendors premises are applicable to grant of licences for sale of toddy as well. In other words, like other kinds of liquor such as country liquor, foreign liquor, spiced liquor, licences in respect of toddy also are to be granted as ??r the procedure prescribed under Sections 30 to 34 of the Act. The sale notification in Form No. 127 in respect of settlement of different kinds of liquor does not exclude toddy from its fold. Learned Counsel for the petitioner pointed out that, of late, sale notifications which are issued in different district for making settlement of different kinds of liquor shops do not now include the toddy shops and that the same are invariably settled with the same very person who was holding the licence earlier. It would not be out of place to mention that even prior to 1984-85 when the auction system in respect of settlement of country liquor shops was introduced in the State of Bihar toddy shops were being settled by auction.

6. This Court dealing with somewhat similar situation in respect of settlement of country liquor shops in the case of Uma Shankar Singh v. Excise Commissioner, Bihar, Patna and Ors. reported in 19 8 PLJR 941 following well known judgments of the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , in the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and in the case of Ram and Shyam Company Vs. State of Haryana and Others, , held that such settlement should be made after a wide publicity so that participation by the intending members of the public is not confined to a particular locality or group and the bidders from outside may, being aware of the proposed settlement, also participate in it. In this connection, it was observed:

Where the object of the statute is to throw open a particular benefit from the State to the members of the public at large and particularly when the statutory procedure provides for wide publicity, in our view, the spirit of the statute will not be upheld if publicity is made only by posting the notification on the notice boards of the Departmental Officer or in selected spots in any particular locality. In our view, this will not result in proper publility and the outside bidders will be deprived of participating in the settlement by auction. Keeping the relevant information confined within a small are available only to a limited number of people, in our view, is likely to result it malpractice, not to speak of loss of Government revenue.

In order to secure the desired object, this Court directed that apart from the statutory procedure prescribed under the Act and Rules framed thereunder, namely, hanging of notice on the notice board of the offices and other selected places in the locality, the substance of the notification should be published in two daily newspapers, one in the local vernacular and the other in English Language in advance at least giving two weeks time to the prospective bidders to comply with all the formalities prescribed under law and file their applications for settlement or attending auction sale. I am of the view that a direction more or less of the same nature should be issued to the State Government in the Excise Department. I am conscious that the settlement of toddy shops in the State of Bihar is almost invariably taken by a cleass of persons, who are not quite educated and may not be regular readers of newspapers. It is expected however, that in course of time, the persons concerned will be more educated and become conscious and aware of the practice/procedure of publication of notice in the newspapers on the basis of the information published therein and will ultimately know about the proposed settlement either personally or through others, in any view, some rational principle has to be evolved so that the settlement of today shops also is not made arbitrarily without giving due opportunity to the interested persons.

7. Having considered the matter in ail its aspects, I think it would be just and proper to direct the State of Bihar and its concerned officials in the Excise Department, while taking steps to settle the toddy shops in future to publish in a local vernacular newspaper at least two weeks in advance of the date of auction, a gist of the notice containing the names of the shops, the date of auction and such other particulars, as may be necessary and sufficient, to let the persons interested know about the proposed auction to participate in the same. It is directed, as was done in the case of Uma Shankar Singh (supra), that this procedure, a part from the procedure that has been followed earlier, be strictly complied with in respect of settlement of all toddy shops in the State of Bihar from the next financial year. The Excise Commissioner Bihar shall issue necessary instructions in this regard and ensure compliance.

8. So far as the instant case is concerned, having regard to the fact that prima facie the impugned settlement appears to have been made on the basis of some auction without proper publicity and notice, which cannot be said to in accordance with law. I was rather inclined to interfere with the same. However, it has to be borne in mind that such settlements are made on yearly basis Since considerable delay has already occurred and the period of impugned settlement will expire on 31.3.1991. I think, no useful purpose will be served in passing any substantive orders with respect to the impugned settlement in this case for which notice will have to be issued to respondent No. 4. For the said reasons it is not

possible to grant relief prayed for by the petitioner. It is, however, expected that on the basis of the notice which I have directed hereinbefore to be published in respect of all settlements of todda shops in the State of Bihar from the next settlement year i.e., 1991-92, the petitioner will get due opportunity to participate in the auction in the next year.

9. The writ application is, accordingly, disposed of with the directions mentioned above.

10. Let a copy of this judgment be given to learned Standing Counsel No. III who has appeared for the State of Bihar for communication.

N.P. Singh, J.

11. I Agree.