(2000) 04 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No. 7024 of 1999

Lakhan Lal APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:

Citation : (2000) 04 PAT CK 0005

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J. and Aftab Alam, J.—This matter relates to a business dealing with country liquor under the provincial Excise Laws. The order being passed today, that is the present one, is only in continuance of the order which was passed on 8.3.2000. Between selecting suitors who may be granted the special privilege to vend excisable goods i.e. country liquor, the court found that no set norms were acted upon to select or reject. When the Excise Commissioner, Bihar and the Board was not prepared to grant the special privilege to the Petitioner and finding that there were contradictions within the State, the court was left with no choice but to direct the learned Government Advocate to file an affidavit of the Chief Secretary, Bihar. The court had indicated that the Chief Secretary would either verify the earlier counter affidavit filed on behalf of the State or may file a fresh affidavit. Earlier, it came on the record of the State that a Member, Board of Revenue had got the impression that the grant of special privilege to the Petitioner by the Excise Commissioner was on the basis of an observation made by the High Court. Finding that the justification for having passed an order in granting the special privilege in a non-existent observation, this Court directed that the Member, Board of Revenue owes an explanation to the court. A show cause was thus issued to the Member, Board of Revenue. In these circumstances the order of 8.3.2000 will form part of this order.

2. Having heard the submission made on behalf of the Petitioner and having perused the affidavit which has been filed by the Chief Secretary as also his

report dated 29.3.2000 which is appended as Annexure-P to the affidavit, the court finds that the Chief Secretary has fairly recorded that notwithstanding the fact that the Member, Board of Revenue had directed that the Petitioner Lakhan Lal be given the special privilege to vend in country liquor, yet the Excise Department had not taken a decision to act on this direction of the Member, Board of Revenue. This in fact was the piquant situation which has been noticed by the court in its earlier order dated 8.3.2000.

3. On perusal of the report of the Chief Secretary, Bihar it appears that the entire matter is one of fiscal responsibility, public revenue, excise policy, public accountability and public audit. The Chief Secretary, Bihar in his affidavit has made a submission in paragraph 5 which runs as follows:

5. That I say and submit that the Respondent State will obey the order/orders that may be passed by this Hon''ble Court in the facts and circumstances of the case.

4. The issue plainly is on what exactly the writ petition is about. It is not in every case that the High Court is obliged to pass orders or in fact mandatory orders in its writ jurisdiction. The grievance of the Petitioner on the writ petition is that despite the direction of the Member, Board of Revenue, the Excise Commissioner, Bihar would not grant him the licence. The main plank of the Petitioner''s case is the direction which has been given by the Member, Board of Revenue. The Petitioner does not seem to rely so much on the aspect whether he qualifies as a person to be granted a licence under the law.

5. On the last aspect the Chief Secretary, Bihar has dealt with the matter. The report of the Chief Secretary virtually places on record that in these matters of privileges, parted with by the State to permit others to sell country liquor, there are players and there are their under studies; a circumstance of syndicatism. This is a writ petition of an under-study. It is now on record that the Petitioner is no other person than one who had been employed by a large combine which dealt with country liquor after the special privilege had been granted by the State of Bihar. This was the firm known as M/s. B.K. Jaiswal.

6. This firm owed to the State Government a sum of Rs. 4,67,17,396.21 towards sales tax on the sale of country liquor. This aspect is mentioned in paragraph 13 of the Chief Secretary''s report. What M/s. B.K. Jaiswal could not get, an attempt was made to route this business through his employee Lakhan Lal, the Petitioner. If Lakhan Lal had to be granted the special privilege to vend in country liquor he would have to meet certain financial commitments so that the State of Bihar could be prima facie satisfied to ensure that he would be a person to whom the licence may be granted under the law without any risk. For instance, there were three aspects upon which Lakhan Lal failed to meet the requirement, (i) that he should offer a back up security as cash money amounting to Rs. 1,12,68,000/ -, (ii) a certificate that he was paying income tax and (iii) suppression of material facts before the Excise Commissioner by not disclosing that a writ petition was

pending at the High Court.

7. The Chief Secretary has dealt with these aspects in his report. The first aspect of the deposit of security by cash; the Petitioner Lakhan Lal did deposit an amount of Rs. 1,02,00,000/ -. The State Government through the Excise Commissioner made enquiries as to the sources of receiving his amount of Rs. 1,02,00,000/ -. The Chief Secretary''s report mentions that when enquiries were made from the Petitioner, Lakhan Lal, the later could not give a clear cut answer as to how all of a sudden he came to possess a sum of Rs. 1,02,00,000/ -. Reluctantly the Petitioner Lakhan Lal gave the information. The information is otherwise on record of the petition and, thus, the Chief Secretary''s report is compatible with the record. A bank transfer had been done so as to prop up the account of Lakhan Lal. These transfers were made by Shri B.K. Jaiswal and his constituent. The observation by the Chief Secretary in this regard is:

8. The Chief Secretary records that the Petitioner Lakhan Lal did not have any financial status to independently make good the cash security required as part of essential conditions to be ever, considered for being granted the special privilege to vend in country liquor. It is in these circumstances that the Chief Secretary, Bihar, categorically records; "thus it appears that Shri B.K. Jaiswal had put up Shri Lakhan Lal".

9. On the aspect of being an income tax payee, the Petitioner Lakhan Lal hopelessly failed in bringing any credentials to show that he was a income tax payer so as to inspire confidence that he may hold the business of a special privilege to vend in country liquor. The investigation of the Excise Department reveals that the Petitioner Lakhan Lal during the year 1997-98 and 1998-99, had shown a solitary receipt of a sum of Rs. 26,000/- in each year. This amount was declared as salary received from Shri B.K. Jaiswal, his former''s (sic) employee. The income tax paid was Rs. 2,200/ - in a given year.

10. The Chief Secretary further records that the Petitioner Lakhan Lal did not intimate the Excise Commissioner on the filing of the subsequent writ petition being C.W.J.C. No. 7024/1999 before the Patna High Court.

11. This completes the picture. The under-study Lakhan Lal was no other person but part of the syndicate of M/s. B.K. Jaiswal. What Shri B.K. Jaiswal could not get, he arranged to receive through Lakhan Lal.

12. Now it remains to be seen whether Lakhan Lal is a person of credibility and confidence who can hold the grant of special privilege and not put the State of Bihar to risk in the sale operations which would carry out in selling country liquor. The court does not have to answer this question. This decision has to be taken by the State administration. The only argument which has been raised on behalf of the Petitioner is if there be a syndicate which has virtually monopoly in selling country liquor in the State of Bihar it is one M/s. S.K.G. Consolidated Limited which continues to receive the special privilege despite the fact that it owes Rs. 49 crores to the State. This is a matter of public accountability which the State

administration will have to account for and take the responsibility. Such matters cannot become claims for equality.

13. What Shri Lakhan Lal brought to this Court by the present writ petition is virtually a petition to examine on a writ of certiorari whether the State of Bihar is in error in not awarding him contract. The claim was not that he qualifies with the essential conditions. It was on negative factor if other defaulting parties have been granted a contract to receive the special privilege in selling of country liquor, then there is no reason to deny the same contract to the Petitioner. This Court can certify that the State administration has committed no error in not giving the business of dealing with country liquor and not placing it in the hands of Lakhan Lal. In so far as any order which may have been passed by the Member, Board of Revenue is concerned, all that this Court can say is that no State can run on bank guarantees and run the risk and hazards of chasing the loss of revenues. In this regard this Court is reminded of the observation of the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, which runs as under:

Governments are not run on mere Bank Guarantees and very often some courts act as if furnishing a Bank Guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere Bank Guarantee. Liquid cash is necessary for the running of a Government as indeed any other enterprise. Where matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown.

14. The learned Member, Board of Revenue committed an error, regard being had to the circumstances to direct the award of special privilege to Petitioner, a person not qualified to be granted the licence to trade in liquor as he did not meet the stringent criteria. The court cannot issue a writ of mandamus as the Petitioner Lakhan Lal so desires to direct the State to grant him the contract.

15. In the circumstances, this petition is devoid of merit and is, accordingly, dismissed with costs.

