**(1971) 07 PAT CK 0017**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1283 of 1969

Lakshmi Narain Ram Narain APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 29-07-1971

**Acts Referred:**

**Citation :** AIR 1973 Patna 81

**Hon'ble Judges :** N.L. Untwalia, J;Akbar Husain, J

**Bench :** Division Bench

**Advocate :** Nawal Kishore Prasad Sinha, for the Appellant; Shreenath Singh (Standing Counsel No. 1), for the Respondent

**Final Decision :** Allowed

# Judgement

1. The petitioner-Firm, Messrs. Lakshmi Narain Ram Narain, had a licence for the wholesale sale of country spirit In several districts in Bihar in Form No. 27 appended to the Bihar and Orissa Excise Manual. Condition No. 7 of this licence was that "the licensee shall be bound to supply to licensed vendors by way of sale, at any warehouse at which the sale of spirit under this license is for the time being permitted, spirit of the quantity or quantities and description or descriptions mentioned in the passes produced by them". A notice dated the 15th February, 1966, seems to have been forwarded to the petitioner-Firm on the 20th October, 1966. A copy of this notice is Annexure 1 to the writ application. The petitioner was asked to show cause why they should not be liable to pay Rs. 1,02.601,90 paise to the Government. They were also directed to show cause for failure to comply with conditions of licence in Form No. 27 of the Excise Manual which they were in duty bound to observe. Cause was shown on behalf of the petitioner. The Excise Commissioner by his order dated the 4th March, 1963 (Annexure 3) held that there was no actual closure of shops in the districts of Palamau, Shehabad and Singh-bhum. The compensation for loss of duty for actual closure in the districts of Haxaribagh and Monghyr, as recommended by the Deputy Commissioner and Collector of those districts came

to Rs. 3317.20 paise in Hazaribagh and Rs. 3554.42 paise in Monghyr. Ultimately, finding the petitioner''s default in regard to its failure to supply in those two districts the Excise Commissioner imposed a penalty of Rs. 8,000/- together with Rs. 6.871.72 paise towards loss of duty and Rs. 1.054.61 paise towards compensation which may be payable to the retail licensees. The total penalty thus imposed was Rs. 15,926.23.

2. The petitioner filed an appeal before the Member Board of Revenue. The learned Member. Board of Revenue, while upholding in the main the view of the Excise Commissioner has knocked down the sum of Rs. 8,000/- imposed by way of penalty separately apart from the imposition of penalty for loss of duty and compensation payable to the retail licensees. In regard to the amount of compensation, the Member, Board of Revenue found that the actual amount of compensation as mentioned in the earlier portion of the order of the Excise Commissioner was Rs. 1,114.86 paise. He therefore substituted the amount of Rs. 1.054.61 paise by the figure Rupees 1.114.86 paise. Thus, the total amount of penalty imposed upon the petitioner under the Board''s order is Rs. 7.986.48 paise. The petitioner has obtained a rule from this Court to show cause why the order imposing penalty upon it be not called up and quashed. Cause has been shown on behalf of the Government

3. Learned Counsel for the petitioner in this writ case could not successfully attack the finding of the authorities below that a loss of revenue to the tune of Rs. 6,871.62 paise has been caused to the Government for the petitioner''s breach of condition No. 7 of the licence in the two districts, namely, Hazaribagh. and Monghyr. Counsel, however, submitted that the breach had occurred in or about the year 1961. Reports by the Deputy Commissioners or Collectors had been made in the years 1961 and 1962. Notice was issued to the petitioner in the year 1966. Till then, no compensation, claim had been made by any retail licensee. In that view of the matter, the amount of penalty imposed upon the petitioner ought not to have included the amount of compensation which could be paid by the Government to the licensees, We think the limited point pressed in this application on behalf of the petitioner should be accepted as correct. The Excise Commissioner has referred to Rule 146 in the Excise Manual at pages 203-04 of Volume II. Learned Standing Counsel No. 1 for the State had to concede that compensation under that rule is not payable to the retail licensees. It may be payable, under the terms and conditions of the licence or under some other provision of law, but surely not under Rule 146. On the facts and in the circumstances of this case, therefore, when no compensation has been claimed by any retail licensee for a period of more than five years, the penalty amount ought not to have extended to the maximum limit as provided in condition 7(A) in licence Form No. 27. The said condition 7(A) runs as follows:--

"Failure to supply spirit as specified in condition 7 supra shall entail penalty at the discretion of the Commissioner of Excise. The penalty may extend to the amount of duty on the spirit demanded by the licensed vendors but not supplied together with compensation for any loss that may fall on Government in consequence of this failure to supply spirit".

The learned Member. Board of Revenue, was right in his view that apart from the amount of duty on the spirit demanded by the licensed vendors and not supplied and the amount of compensation payable to them, no other penalty could be imposed. But these two amounts showed the maximum limit of the penalty which could be imposed under condition 7(A). On the facts of this case, it is clear to us that the imposition of a penalty of Rs. 1,114.86 paise as compensation payable to the retail licensees was illegal and unjustified.

4. In the result, we allow this writ application to the extent indicated above and knock down that portion of the orders of the Excise Commissioner and the Board (Annexures 3 and 5) whereby the petitioner has been directed to pay the sum of Rs. 1,114.86 paise as compensation payable to the retail licensees. The net result is that a sum of Rs. 6,871.62 paise payable as penalty by the petitioner is maintain-ed. There will be no order as to cost.