(1989) 03 OHC CK 0047

In the Orissa High Court

Case No : O.J.C. No''s. 3606 of 1987

Mahendra Kumar Das and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 22, 42, 43, 43(2), 43(3)

Citation : (1989) 68 CLT 148

Hon'ble Judges : H.L. Agrawal, C.J;P.C. Misra, J

Bench : Division Bench

Advocate : B.M. Patnaik and K.N. Jena, for the Appellant; K.C.J. Ray, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Misra, J.—Petitioners in all these cases are exclusive privilege holders for carrying on business of retail selling of country spirit on the strength of licence issued in their favour u/s 22 of the Bihar and Orissa Excise Act 1915 (hereinafter called the ''Act''). Like the previous years, they were granted exclusive privilege u/s 22 of the Act for the aforesaid purpose for the financial year 1987-88 subject to terms and conditions set out in the said Licences vide Annexures-1 and 1/a. Under the terms of licensees, monthly licence fee is payable and the Petitioners in the aforesaid cases had been paying monthly licence fee noted in individual licence granted to each of them. Under the provision of the said Act and Boards Excise Rules, 1965, read with the conditions of licence, the country spirit to be sold by the licensees are to be supplied and issued from the Ware House under the control of the licensing authority and the licensees are not entitled to procure spirit from any other source to be sold in the retail shop for which licence has been granted. Each of the Petitioners alleged that the licensing authority did not/ could not supply the country spirit from the Ware House for different periods to them for which'' their retail shops were virtually closed. Due to non-supply of country spirit of the concerned authorities there was no sale in the shops of the

Petitioners during the period of non-supply and consequently they incurred heavy loss. Each of the calculated proportionate licence fee for the period during which the shop remained closed for non-supply of country spirit and made a demand for refund of the said portion of the licence fee. Their representation for refund of the proportionate, licence fee was rejected by the Addl. District Magistrate vide Annexure-2 in each of the cases. Each of the Petitioners have challenged the said order of the Additional District Magistrate in Annexure-2 praying to quash the same and for a further declaration that they are not liable to pay any sum towards monthly fees for the period during which the authorities did not supply country spirit for sale to the Petitioners.

2. Though the Petitioners are different in each of the writ applications, identical questions of fact and law are relied upon in each of the cases for the reliefs sought. The reply given by the opp. parties is also identical in each of the said cases. All these applications were therefore, heard analogously and this common judgment will dispose of all the writ applications.

3. Learned Counsel for the Petitioners relied upon various provisions of the Act and the Board''s Excise Rules for the purpose of showing that unless the concerned authorities supply the country spirit and authorise them to have it from the Ware House, they would not be able to carry on their business as they are not entitled under law to procure the spirit and vend the same from any other source. In the counter submitted by the opp. parties, it has been averred that some arrangements were made for supply of the country spirit to the Petitioners and they were also directed to draw their requirements in a bulk at a time to meet the requirements of a few days which they did not comply. They also assert that the Petitioners in no event would be entitled to any remission of the licence fee.

4. Under the Bihar and Orissa Excise Act the licensing authority may cancel or suspend a thence for the reasons enumerated in Section 42 of the Act. Power of withdrawal of licence has also been vested with the licensing authority u/s 43 of the Act and such power is exercisable for the reasons contained in that Section. Section 45 of the Act provides that no person on whom any right or exclusive privilege has been granted under the Act shall have any claim to the renewal of such licence or exclusive privilege to save as provided in Section 43, any claim to compensation on the determination thereof. Section 43, Sub-sections (2) to (4) provide for remission of proportionate licence fee payment of compensation and refund of proportionate licence feet if the licence is withdrawn by the authorities. There is no provision under the Act or the Rules for remission or refund of any proportionate licence fee for the period during which the country spirit could not be supplied to a licensee or exclusive privilege holder. Thus assuming for die sake of argument that the authorities could not or did not supply country liquor to the Petitioners there is no provision under the Act or Rules for refund of proportionate licence fee for that period.

5. No provision under the Act or Rules has been relied upon by the learned

Counsel for the Petitioners which makes it obligatory for the licensing authority for supply of a particular quantity of country spirit to a licensee or prevailed holder during the term of the licence. Even if no country spirit is supplied by the authorities, the licensee continues to be a licensee during that period. The prayer for refund of the licence fee to any of the Petitioners as per their demand could not be accepted by the authorities as law does not permit the same. The Additional District Magistrate in Annexure-2 appended to each of the writ applications has communicated that the claim is not maintainable, under law. 1, therefore, find do legal justification for interference in any of these writ applications.

6. In the result, each of the writ applications is dismissed, but in the circumstances, there shall be no order as to costs.

H.L. Agrawal, C.J.

7. I agree.

Writ applications dismissed.

