(2003) 05 PAT CK 0059

In the Patna High Court

Case No : C.W.J.C. No. 4691 of 2003

M.K. Enterprises — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : (2003) 3 PLJR 403

Hon'ble Judges : Nagendra Rai, J;A.K. Verma, J

Bench : Division Bench

Advocate : D.V. Pathy and Chiranjiva Ranjan, for the Appellant; R.K. Dutta and Raj Nandan Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the writ applications are connected matters and as such they have been heard together and are being disposed of by this common order.

2. The matter relates to grant of exclusive privilege for manufacture and wholesale supply of country liquor and spiced liquor for the period 2002 to 2005. Tender notice was issued on 16.1.2002 and the last date for submission of tender paper was 27.2.2002. It appears that tenders were opened after expiry of last date and scrutiny was made by the Committee. In the meantime, one Dr. Ajay Kumar Singh filed C.W.J.C. No. 5020 of 2002 before this Court for a direction to conduct a thorough inquiry for grant of exclusive privilege and licence. While the matter was pending, the Department started the process of settlement.

3. In the meantime, one Sunil Kumar Singh filed C.W.J.C. No. 2756 of 2003 before this Court for a direction to the State Government to grant exclusive privilege. A counter affidavit was filed in that case on behalf of the State stating that no step for grant of exclusive privilege has been taken for the reason that PIL filed by Dr. Ajay Kumar Singh is pending before this Court.

4. This Court noticed that there was no stay order passed by this Court. Accordingly, by order dated 3.4.2003 the State Government was directed to take

steps for grant of exclusive privilege for manufacture and supply of wholesale country liquor and spiced country liquor within a period of one month, a copy of which has been annexed as Annexure-3 to the writ application. The operative part of the order passed by this Court was to take steps and make settlement within a period of one month from the date of passing of the order on the ground that other formalities have been complied with. This Court further observed that the settlement should be made in accordance with law and no settlement should be made to the person who is defaulter or has not complied with the other conditions of the tender notice.

5. After passing of this order, the Respondents authorities have taken steps and from perusal of the counter affidavit it appears that they have not understood the order passed by this Court in Sunil Kumar Singh''s case and have enlarged the scope of enquiry for settlement beyond the terms of the order passed by this Court as well as beyond the terms of the tender notice in pursuance of which settlement has to be made. The relevant date to consider the eligibility according to the tender notice is 27th February, 2002 and the cases of the parties have to be considered in terms of the tender notice and not beyond that. This Court never said that the State Government should widen the scope of the enquiry to find out whether or not there was dues against the tenderers in the entire State of Bihar. The authorities have to act according to the tender notice and to decide whether the tender has to be accepted or not.

6. So far C.W.J.C. No. 4691 of 2003 is concerned, the prayer has been made on behalf of the Petitioner to consider its case like the cases of Kamlesh Kumar Sinha and Basant Kumar whose tenders were not found in order and writ applications filed by them were dismissed by this Court. It is to be stated that Kamlesh Kumar Sinha and Basant Kumar had filed tenders but as their tender papers were not in order so their tenders were not under consideration. They filed C.W.J.C. Nos. 4945 and 4953 of 2002 respectively before this Court and this Court by order dated 17.4.2002, as contained in Annexure-6, has already dismissed their writ applications on the ground that one of the terms and conditions of the tender notice was not fulfilled by them. This Court is constrained to observe that when their cases have been rejected by this Court, then how the Commissioner Excise and Member Board of Revenue will reconsider the same by enlarging the scope of enquiry by misconstruing the order of this Court.

7. The Petitioner of aforesaid C.W.J.C. No. 4691 of 2003 has not fulfilled the terms and conditions of the tender notice on the relevant date i.e. 27.2.2002 and as such no direction can be issued by this Court to reconsider its case for grant of exclusive privilege.

8. So far case of the Petitioner in C.W.J.C. No. 4759 of 2003 is concerned, admittedly on the relevant date there was tax due against him. Mr. P.K. Shahi, learned Counsel appearing of the Petitioner stated that subsequently the Petitioner has cleared his dues and as such his case should be considered for

grant of exclusive privilege.

9. We find ourselves unable to accept his submission. Once we have ordered that the relevant date to consider the eligibility of the tenderers is 27.2.2002, then on that day if the Petitioner was not eligible on account of dues against him, no order can be passed for grant of exclusive privilege in favour of the Petitioner even though subsequently he has cleared his dues.

10. It is reiterated that the cases of only those tenderers who were eligible on the relevant date i.e. 27.2.2002 or with regard to whom order has been passed by this Court or any other court should only be considered in accordance with law in the manner as indicated above.

11. In the result both the writ applications are dismissed.

12. Let a copy of this order be given to learned S.C. 4.

