(2007) 03 PAT CK 0175

In the Patna High Court

Case No : CWJC No. 241 of 2007

M/s. Bachhan Traders APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Citation : (2007) 2 PLJR 543

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Judgement

1. The petitioner in this case seeks a direction for refund of the amounts of security deposit and the licence fees paid by it for the grant of licences for manufacture and sale of country liquor in five of the six districts falling under Muzaffarpur zone for the year, 2001-02. The facts of the case are simple and can be briefly stated thus. The petitioner was granted by the State Govt. the exclusive privilege for manufacture and sale of country liquor in Muzaffarpur zone (comprising six districts) for a period of three years from 1999-2000 to 2001-02. The grant was made on the basis of the tender submitted by the petitioner in response to the tender notice published in the official gazette of 16.12.1998 (Annexure 14). Clause 2 (ka) of the tender notice required the tenderer to deposit Rs. 5 lakhs as security for each zone, refundable to the successful tenderer on the expiry of the settlement period. Clause 12 of the notice enumerated the documents required to be submitted along with the tender. These included, the Sales tax clearance certificate (SODHAN PRAMAN PATRA) to be issued by the competent sales-tax officer of the area where the tenderer had his regular business/ permanent address. The petitioner submitted its tender along with the required documents/certificates after depositing the security money and it received the grant from the Government.

2. Under the statutory scheme, following the grant of the exclusive privilege by the State Govt. the Dist. Magistrate of each of the districts falling under the zone would issue to the settlee annual licences on payment of requisite licence fees.

The petitioner was, accordingly, given licences for the six districts falling under Muzaffarpur zone for the years, 1999-2000 and 2000-01. The two years of the settlement period passed normally with no complaint of any breach of the terms and conditions of the grant by the State Government or the licences issued by the District Magistrates. Towards the end of March or the beginning of April, 2001, the petitioner was given licences for the last year of the settlement period (2001-02) in each of the six districts on payment of the annual licence fees. The amounts of licence fee for each of those districts and the challans by which the licence fees were deposited are stated in para 16 of the writ petition. Shortly after the licences for the year 2001-02 were issued, on 12.4.2001, the Assistant Commissioner, Commercial Taxes, Hajipur Circle, Hajipur sent a letter to all the six Dist. Magistrates stating that he had received intimation from Patna City, West Circle that the petitioner had huge arrears of sales tax and hence, the No-dues certificate given to the petitioner under his office memo no. 140 dated 17.3.2001 was being cancelled. He also advised that in view of this development the licences issued to the petitioner should also be cancelled. On the basis of the letter of the Assistant Commissioner, Commercial Taxes, Hajipur all the six Dist. Magistrates cancelled the licences issued in the petitioner''s favour for the year, 2001-02.

3. Following the cancellation of the licence, the Dist. Magistrate, Muzaffarpur also refunded Rs. 600,011/- deposited by the petitioner as licence fee for the year, 2001-02 vide his order, dated 22.10.2001 (Annexure 10). The petitioner made applications for refund of the licence fees before the five other Dist. Magistrates too but no order was passed on his claim for refund and he finally came to this court seeking appropriate directions to them.

4. Before proceeding to examine the rival contentions it needs to be clarified that the petitioner is not making any grievance with regard to the decision to rescind the licences granted to him for the year, 2001-02. On this issue, the authorities appear to be on firm grounds as one of the terms of the licence plainly stipulates that no licence would be issued in favour of anyone against whom there are Govt. dues, of any kind. The real dispute is with regard to the authorities'' refusal to refund the licence fees paid by the petitioner for the licences that were cancelled within a few days of their issuance.

5. Mr. Y.V. Giri, Senior Advocate appearing for the petitioner submitted that any forfeiture of money must have a sanction either in law or in any of the terms and conditions of the tender notice, the grant made by the Government or the licences issued by the District Magistrate. He invited our attention to clause 12 of the tender notice that required a tenderer to submit, apart from other documents, a sales tax clearance certificate granted by the competent sales tax officer of the place where he had his regular business/ permanent address. The proviso/explanation to clause 12 stated that in case any certificate(s) submitted with the tender was found to be fake (farzi), the tender would not be taken into consideration and in case the discovery was made after the settlement, it would

be cancelled and the security deposit would be forfeited. He also invited our attention to clause 15 of the grant made by the State Government that stipulated that no licence would be issued in favour of anyone against whom there were Government dues of any kind, Mr. Giri also referred to clause 24 of the licences issued in the statutory form no. 27 that incorporated all the terms and conditions of the grant of settlement as part of licence and made them binding on the licencee. He submitted that the sales tax clearance certificate submitted by the petitioner along with his tender was never held to be fake and there can be, therefore, no question of any breach of clause 12 of the tender notice. He further submitted that in terms of clause 15 of the grant, the authorities could deny the issuance of licences to the petitioner for the year 2001 -02 on the grounds of sales tax dues against him. But in that case, there was no justification for forfeiture of the licences fees collected from the petitioner.

6. The petitioner has brought a copy of the sales tax clearance certificate submitted by it along with the tender notice as Annexure 17 to its supplementary affidavit. The certificate was issued on 13.1.1999 by the Assistant Commissioner. Commercial Taxes, Patna City, West Circle. The certificate testified that the petitioner was assessed for the periods 1995-96 and 1996-97. It had submitted its returns till 30.11.1998 and had also paid the admitted taxes till that date. The certificate further testified that there were no dues against the petitioner. Mr. Giri submitted that the certificate was accepted by the Excise authorities for the grant of the settlement and it is not the case that it was fake, forged or fraudulent or it was obtained by any misrepresentation made by the petitioner.

7. Mrs. Jha tried to explain that the certificate was issued simply on the basis of the returns filed by the petitioner for the assessment periods 1997-98 and 1998-99. The petitioner had of course made payment of the taxes in accordance with its returns. But the assessment orders for the two assessment order for the period 1997-98 was passed on 19.10.2000 and for the period 1998-99 on 23.12.2000 and then it came to light that there were dues of over Rs. 22 crores against the petitioner for the years, 1997-98, 1998-99 and 1999-2000. The Assistant Commissioner, Patna city then wrote to his counter-part at Hajipur and he passed on the information to the Dist. Magistrates and on that basis the licences granted to the petitioner for the year, 2001-02 were cancelled.

8. Upto this stage the action taken by the authorities was quite unexceptionable. As noted above clause 15 of the grant plainly stipulated that no licence would be issued in favour of anyone against whom there were Govt. dues of any kind. The District Magistrates were informed that there were dues against the petitioner and they were, therefore, fully within their rights to cancel the licences that were issued in favour of the petitioner just a few days ago. But here we once again came back to the question of non-refund of the licence fee.

9. The authorities would have been fully justified in forfeiture of the security deposit and the licence fees had the sales tax clearance certificate been held to be fake, forged or fraudulent. But that is not the case here. The Sales-tax

Clearance certificate is not said to be fake or forged. It can not even be said to be wrong or incorrect as it stated the facts that were in existence on the date of its issuance. No materials was produced before the Court to infer that the petitioner obtained the certificate from the Assistant Commissioner, Commercial Taxes, Patna City by making any misrepresentation of facts or by any other fraudulent means. The dues against the petitioner came to light much later on the basis of the assessment orders passed for the assessment periods in question. The sales tax clearance certificate can not be said to be false or incorrect in view of the dues coming to light on the basis of the assessment orders passed long after the issuance of the certificate.

10. Mrs. Jha sought to justify the non-refund of the licence fees with reference to section 42(1)(c) of the Excise Act and clause 6 of the grant. Section 42 deals with cancellation or suspension of a licence. Sub-section (4) provides for forfeiture of licence fees under certain conditions. One of the conditions for cancellation/suspension of licence is any breach of the terms and conditions of the licence. Clause 6 of the grant makes it obligatory for the grantee to strictly obey the terms and conditions of the licence. But the provisions of both section 42(1)(c) and clause 6 of the grant bring us back to the licence issued under the statutory form 27. In the terms of the licence we are unable to find anything that would justify the refusal to refund the licence fees for the licences, cancelled on a ground other than those enumerated u/s 42.

11. The matter can be viewed from another angle. In this case the existence of Govt. dues against the petitioner came to the knowledge of the licensing authorities a few days after the grant of licences. They were, thus, in a position to simply cancel the licences and to hold on the licence fees deposited by the petitioner. Assuming, the information was received by them in the previous month; then they could only refuse to issue licences to the petitioner but they could not recover from it the licence fees for that year.

12. Thus, viewed from any angle we are unable to sustain the decision of the five Dist. Magistrates not to refund the licence fees deposited by the petitioner for the year, 2001-02. We accordingly hold that the petitioner is entitled to the refund of the amounts of the security deposit and the licence fees deposited by it for the period 2001-02 in the five districts. The concerned District Magistrates are directed either to refund to the petitioner the amounts of licence fees or to adjust the amounts against the Government dues. The adjustments may be made against the petitioner''s dues in the Muzaffarpur zone and/or in any other zones under the Excise Department. In case any refundable amount remains in excess after meeting the demand of the Excise Department the same may be adjusted against the dues of the Sales-Tax Department. The refund/adjustment must be made within two months from today. This writ petition stands disposed of with the aforesaid observations and directions.

