(2012) 07 JH CK 0180

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 6321 of 2005

M/s Ramesh Chandra Rai APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2013) 1 AJR 63 : (2012) 4 JCR 553 : (2013) 1 JLJR 505

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : K.K. Singh and Piyush Poddar, for the Appellant; Manoj Kr. Choubey and J.C. to S.C.-III, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The instant writ petition has been filed for issuance of direction upon the respondents to refund the proportionate license fee paid by the petitioner regarding its 37 retail country liquor shops in the district of Giridih with respect to the non-supply of 1,49,678 LPL of country liquor for the period from July, 2004 to July, 2005 and as such he is entitled to get Rs. 67.67,862/- from the respondents.

2. It is the case of the petitioner that he was granted settlement of 37 retail country liquor shops license for sale in the district of Giridih fixing early quota of liquor to be supplied to the petitioner as well as monthly installment of license fee as per chart furnished at para 6 of the writ petition. Petitioner further submits that for the period from July, 2004 to July, 2005 i.e. 13 months the petitioner had deposited all the monthly installments of license fee with respect to the aforesaid 37 retail shops to the tune of Rs. 1,18.87,731 against which the respondents were required to supply 2.62,909 LPL of country liquor, but they could supply only 1,13,231 LPL and the remaining 1,49.678 LPL were not supplied.

3. On the basis of the aforesaid facts it has been submitted that petitioner is

entitled to refund of Rs. 67,67,862/- for the period from July. 2004 to July, 2005 against the non supply of 1,49,678 LPL of country liquor by the respondents relying upon the certificates annexed as annexure-3 to the writ petition. It is submitted that annexure-3 dated 2.7.2005 is issued by the Superintendent Excise, Giridih which shows that there was non supply of country liquor from time to time.

4. Respondents have appeared and filed their counter affidavit. It is submitted on their part that the petitioner is not entitled for any such refund. Petitioner was settled with the country liquor shops for the entire district of Giridih on the basis of the auction cum tender system for which public notice was issued and as per the provision of clause 19 of the said notification the licensee was supposed to lift monthly quota of country liquor from the whole sale licensee and was required to pay 3 months license fees in advance immediately after settlement and thereafter monthly license fee on 20 of every consequent month. It is submitted that petitioner failed to pay license fee in due time and every time he was late by 1 month in payment As per the statement made in the counter affidavit an exclusive privilege for wholesale supply of country liquor is being granted u/s 22 of the Excise Act in every district holder of such license is bound to make wholesale supply to retail vend licensees of his own district in his letter of grant and he is also held bound to make wholesale supply to the retail vend licensee of other district too. The license of the petitioner was effected from 17.11.2004 under the signature of D.C., Giridih. As such the case of non supply arises from 17.11.2004, while the petitioner had staked his claim from July, 2004 itself. It has further been submitted that the license for wholesale supply of country liquor was transferred to the petitioner on his own request with effect from 17.11.2004. In para 13 of the counter affidavit, respondents have given a detailed chart of the payments made by the petitioner for different months after due date of payments, which is supported by the report of the Superintendent, Excise. Further, by way of a chart at para 14 the quota of LPL supplied to the petitioner on demand has already been indicated. It is also submitted that on receipt of requisition for supply of liquor order for the same were issued in favour of the petitioner and whenever it was necessary country liquor was made available to him from the wholesale supplier of other neighbouring districts.

5. On the basis of the aforesaid averments it is submitted on the part of the respondents that there was no problem of availability of liquor since, it could be made available from the wholesale supplier of the other districts, but the petitioner was not interested in lifting the same. As such, it is submitted that petitioner is not entitled for any relief.

6. From the aforesaid facts and circumstance, it appears that the petitioner, who was granted the settlement of whole sale liquor license for entire district of Giridih w.e.f. 17.11.2004 was supposed to deposit the license fee as per the stipulation contained in the order of settlement as well as under the provision of the act and also to lift the quota for which he himself was whole sale supplier as

he was given license for whole sale of the country liquor as well as for 37 outlets of the district of Giridih. As per the statement made in the counter affidavit, petitioner himself was making delay for the deposit of the license fee beyond the due date and as and when the demand was made the supply of country liquor was made to him as per the chart annexed. However, petitioner has submitted by way of certificates (Annexure-3) dated 2.7.2005 issued by the Superintendent of Excise, Giridih that no issue of country liquor against indicated I.P. No. and date in favour of the petitioner could be made due to non availability of the stock. The aforesaid averment has not been denied at any place in the counter affidavit.

7. In view of the aforesaid facts and circumstances, liberty is given to the petitioner to approach the Superintendent Excise, Giridih by filing a representation for consideration of his grievances relating to proportionate refund of money with respect of the non supply of country liquor a described in Annexure-3, certificates issued by the Superintendent of Excise dated 2.7.2005 along with all the necessary facts and documents including the aforesaid certificates, annexed as Annexure 3. If such a representation is preferred, the Superintendent Excise, Giridih shall consider the same in accordance with law and pass a reasoned and speaking order within 8 weeks from filing of the said representation and the same shall be communicated to the petitioner. Further, if the claim of proportionate refund of money made by the petitioner is found to be legally admissible and genuine, the same shall be refunded to him within 4 week, thereafter. With the aforesaid observation and direction, this writ petition is disposed of.

