(2006) 10 PAT CK 0039

In the Patna High Court

Case No : CWJC No. 11458 of 2006

M/s Salson Liquor Pvt. Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Citation : (2007) 1 PLJR 40

Hon'ble Judges : Samarendra Pratap Singh, J;Aftab Alam, J

Bench : Division Bench

Judgement

1. Heard Mr. Y.V. Giri, Senior Advocate appearing for the petitioner and Mr. Advocate General representing the State. Having regard to the order that is proposed to be passed in this case, it is not needed to sate the facts of the case in great detail. Suffice it to note that the Excise Commissioner made a surprise inspection of the petitioner''s bottling-plant and warehouse etc. on 6.3.06. The inspection report indicated gross dereliction of duty by the Excise official posted at the petitioner''s bottling plant and warehouse and an equally serious violation of a number of statutory rules, regulations and the terms and conditions of the licences by the petitioner. On the basis of the inspection report the Collector, Patna, (the licensing authority) gave a show cause notice to the petitioner and on consideration of the show cause, cancelled its licences issued under the Excise Act. Against the Collector''s order the petitioner went in appeal before the Excise Commissioner (it may be noted that by that time the post of Excise Commissioner was being held by someone else than the officer who had made the inspection). The Excise Commissioner asked the Collector for his comments on the memo of appeal submitted by the petitioner. The Collector being preoccupied with the Panchayat election was unable to give his comments in time. Thereupon the Excise Commissioner passed an ex-parte order allowing the petitioner''s appeal and setting aside the order passed by the Collector. In that order the Excise Commissioner also made some adverse remarks about the Collector.

2. The Collector went in revision before the Member, Board of Revenue. The Member, Board of Revenue took the view that since the proceeding was initiated on the basis of the report/complaint by the Commissioner, it was improper for him to hear the appeal in the matter. He should have asked the petitioner to move the Board of Revenue against the Collector''s order. The Board of Revenue also did not entertain the petitioner''s plea on merits observing that the revision was filed by the Collector and not by the licencee (the petitioner). The Board of Revenue, for those reasons simply set aside the order of the Excise Commissioner with the result that the petitioner was left with Collector''s order by which all its licences stood cancelled. Against the order of the Board of Revenue the petitioner has come to this court.

3. After some arguments were advanced by both sides both on procedural aspects of the matter as well as on merits of the case Mr. Giri pointed out that in an earlier case of Iceberg Industries Limited vs. The State of Bihar and Ors. (CWJC No. 11280/2006), the Advocate General had agreed to the restoration of that unit''s licence(s) on payment of the full amount of the loss of revenue caused by it along with an equal amount as penalty. The Court then wanted to know the amount of revenue loss caused to the State by the petitioner''s actions in violation of the rules, regulations and the terms and conditions of its licences. The Advocate General requested for a brief adjournment for getting the computation made with regard to the revenue loss suffered by the State. At 2.15 P.M. when the case was again called out the Advocate General produced before the court a calculation chart of excise evasion by the petitioner as appearing from the inspection report, dated 6.3.2006 by the Excise Commissioner. According to this statement the total revenue loss caused by the petitioner amounted to Rs. 6,74,438/-. Let the calculation chart submitted by the Advocate General be kept on the record of the case.

4. In light of the earlier order of the court passed in the case of Iceberg Industries Limited on 27.9.2006 the Advocate General submitted that the State may consider not to cancel the petitioner''s licences and to allow it to resume its business provided the petitioner undertook to fully adhere to the statutory rules, regulations, instructions and the terms and conditions of its licences and further agreed to make good the loss of revenue suffered by the State and paid some suitable penalty as may be fixed by the Court.

5. On consideration of all material facts and circumstances the court observed that the petitioner may yet be benefited by the stand taken by the Advocate General. We made it clear to Mr. Giri that in case the petitioner agreed to pay a consolidated amount of Rs 18 lakhs (inclusive of both the amount of loss of revenue and penalty) the court may consider to direct restoration of its licences in light of the stand taken by the Advocate General. To this condition Mr. Y.V. Giri gave an unqualified consent and submitted that the petitioner was prepared to deposit the sum proposed by the court. We accordingly direct that the petitioner''s licences shall stand restored on payment of Rs. 18 lakhs by it to the

Excise Department. This writ petition is disposed of with the aforesaid observations and directions.

