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**(1973) 05 PAT CK 0001**

**In the Patna High Court**

**Case No : C.W.J.C. No"s. 42 of 1971 and 896 of 1972**

M/s S.K.G. Sugar Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision : 11-05-1973**

**Acts Referred:**

Bihar and Orissa Excise Act, 1915 — Section 90(7)

**Citation : (1973) 6 PLJR 449**

**Hon'ble Judges : N.L. Untwalia, C.J;S.K. Jha, J**

**Bench : Division Bench**

**Advocate :** Rajeshwari Prasad and A.B.S. Sinha, for the Appellant; Shreenath Singh and Akhileshwar Prasad Singh in C.W.J.C. 42/71 and Messrs Birendra Mohan Sinha and Prabhu Nath Roy in C.W.J.C. 896/72, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

S.K. Jha, J.—As the points involved in both these writ applications are mainly common, we propose to deliver a common judgment with regard to both of them. But so far as the facts are concerned, they will be given separately at appropriate places. In C.W.J. C. 42 of 1971 the petitioner prayed for quashing of an order of the Board of Revenue, Bihar, dated 17th December, 1970 rejecting the petitioner's application objecting to the realisation of Re. 1. 47 for the year 1968-59 and Rs. 29,546.51 for the year 1969-70 by way of licence fee for licence granted to it for wholesale trade of India made foreign liquor. A copy of the order has been marked Annexure 3 to the writ application. The licence was granted to the petitioner in form I for the sale of India made foreign liquor to trade, i.e., wholesale trade in India made foreign liquor. The order contained in Annexure 3 aforesaid was passed. After the petitioner had objected to the demand made on 16th of April, 1970 by an order contained in Annexure 2 to the writ application. It is pertinent to mention that the licence for the year 1968-69 expired on the 31st of March, 1969 and that for the year 1969-70 expired on 31st March, 1970 and the demand under Annexure 2 was made 16 days later than the expiry of the

last mentioned licences. The demand is purported to have been made by way of a levy of licence fee under the provisions of Rule 106 of the Rules framed by the Board of Revenue (hereinafter called the Rules) u/s 90 (7) of the Bihar and Orissa Excise Act, 1915 (Act II of 1915). Rule 106 of the Rules formerly prescribed a licence fee of Rs. 36/- per annum payable in advance, which, it is now admitted by all concerned, was raised to Rs. 200/- per annum for the years in question.

2. Mr. Rajeshwari prasad, Learned Counsel for the petitioner has challenged the validity of the levy of the so-called licence fee on three grounds--

(i) That the fee being based on sale was not a fee for the licence but was a tax which the Commissioner of Excise was not entitled to levy. In other words, the amount purported to have been levied as licence fee has no correlation with any service rendered by the State in the Excise Department for having granted licence for wholesale trade in India made foreign liquor and as such, the levy was not authorised, there being no quid pro quo

(ii) That even under the express language of Rule 106 as read in juxtaposition to Rule 107, the imposition of licence fee on the basis of quantum of sale was not authorised.

(iii) That the terms of the licence having expired, the demand was not authorised by law.

3. Learned Counsel for the petitioner, in support of his first contention, has placed reliance on a decision of the Supreme court in (1) *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, . That was a case in which a licence fee in respect of a licence for wholesale vend of denatured spirit has been sought to be levied under the provisions of Rule 111 of the Rules on the basis of quantum of sale and the grounds on which the levy in present case is being sought to be justified were also put forward as grounds of defence in that case. Before this High Court, in a writ application filed by the petitioner of that case, such a levy under Rule 111 of the Rules having been challenged, the stand of the State Government in the Excise Department found favour with this Court, where a Bench of this Court held such a levy to be legal and valid as being an imposition of fee. Having lost in this Court, the petitioner of that case went up in appeal to the Supreme Court, certificate having been granted by this Court itself. After reviewing, a series of decisions starting from *Sudhendra Thirtha Swamiar V. Commissioner for Hindu Religions and Charitable Endowments, Mysore* (1963) Sup 2 SCR 302) ] up to date, the Supreme Court held:--

(a) "From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact relationship. The relationship expected is one of a general character and not as of arithmetical exactitude".

(b) "We are inclined to think that the learned judges of the High Court have misunderstood the observations of Seligman quoted in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, to the effect that it is a special benefit accruing to the individual which is the reason for the payment of fee".

Having considered the case law on the subject and laid down the propositions of law, the Supreme Court went on to consider as to whether, on the facts, it has been proved by the State that it had been rendering any service to the appellant in lieu of the fee levied and if it did render any service, whether there was a reasonable relationship between the services rendered and the fee levied. In the absence of any materials on the record of the case to show any relationship between the services said to be rendered by the State and the fee purported to have been levied under Rule 111 of the Rules, the Supreme Court held that the levy seemed in the first instance, not to be valid and prima facie, even if the State could be said to be rendering some services to the licensee, the levy appeared to be excessive and not justified. On a prayer having been made on behalf of the State before the Supreme Court that opportunity be given to it (State) to place materials on record to show the actual services rendered and the nature of services rendered in order to justify the levy of such fee, as an exceptional case, the Supreme Court remanded the matter to this Court.

4. Judging in the light of the principles laid down by the Supreme Court in regard to the justifiability, legality or validity of a fee sought to be levied, I find that even a fee sought to be imposed under Rule 105 will have to be judged in accordance with the principles of law laid down in that case. The demand of the aforesaid amount from the petitioner is said to have been made on the basis of a levy of 20 paise for each bottle of 700 mili litres of India made foreign liquor and 5 paise for each bottle of Beer of 650 mili litres, subject to a minimum of Rs. 300/-. Even though in the present case, counter-affidavit has been filed on behalf of the State, nothing has been brought on record nor have any materials been placed before us to show any relationship between the service, if any, rendered by the State to the licensee and the fee sought to be charged from it. Learned Standing Counsel No. 1 appearing for the State, however, submitted in course of his argument that the services rendered by the State would be broadly classified under the heads--

(a) Maintenance of law and order.

(b) Preventing other traders from illicit trade in foreign liquor apart from the positive gain to the licensee by not granting licence to others.

(c) Maintenance of proper means of transport, for example, roads, bridges, and so on and so forth.

I fail to see, however, what relationship or even a remote connection of such services said to be rendered has got with the licence of the licensee, i. e., the petitioner. It is evident, therefore, that there is no quid pro quo for the amount of

levy purported to have been made under Rule 106 on the basis of annual turnover. In such circumstances, it cannot be held that the demand made in Annexure 2 could, in any way, be said to be a demand of a fee which can be validly levied for the grant of a licence in accordance with the provisions of (Rule 108. Learned Standing Counsel No. 1 also sought to place great emphasis on the point that since a special benefit was accruing to the petitioner by the grant of licence, that should be taken to be the reason for the payment of the fee in question. This, however, was a submission expressly made and was the ratio of the High Court decision in (1) Indian Mica and Micanite Industries" case, which was expressly overruled by the Supreme Court in the case referred to above, at the end of Paragraph 14. This ground by itself is sufficient to strike down Annexure 2 under which the demand was made and the order of the Member, Board of Revenue (Annexure 3), by which such demand was sought to be justified.

5. Learned Counsel appearing on behalf of the State, however, drew our attention to a Bench decision of this Court in (2) M/s Shaw Brothers V. Shri N. B. Sinha and others (C. W. J. C. 1140 of 1968 decided on 4th November, 1970) for the proposition that in similar circumstances and on a similar formula a levy having been made under Rule 106 of the Rules such imposition of the so-called fee has been held to be legal and valid by this Court. This case, however, in my opinion, cannot be of much use to the respondents now as this judgment was pronounced earlier than the Supreme Court decision referred to above. There are two very cogent reasons why the authority in this case should be deemed to have been overruled by the Supreme Court, on being that the case has relied upon an earlier Bench decision of this Court in (1) the Indian Mica and Micanite Industries" case, which was subject matter of the appeal before the Supreme Court in the case already referred to and the judgment of this Court has been expressly reversed by the Supreme Court and, secondly, the ratio of this Court seems to be that the grant of licence being a special benefit conferred on the individual was a reason for the demand of such a levy, and this point again, as has already been stated, was expressly referred to by the Supreme Court to be rejected outright.

6. The first point urged by Learned Counsel for the petitioner, therefore, must succeed.

7. The second point for consideration is whether under Rule 106 of the Rules the imposition of licence fee, on the basis of quantum of liquor sold, is authorised or not. For an answer to this question, certain other rules will have to be referred to and compared. The rules commencing from Rule 106 up to Rule 112 of the Rules deal with licence fee payable in respect of various types of licences granted for the sale of foreign liquor. Rule 106 deals with licence fee payable in respect of wholesale trade of foreign liquor; Rule 107 for the retail sale thereof; Rule 108 (1) deals with fees in respect of licences for temporary bar for theatres and other places of amusement; Sub-rule (2) thereof provides for exemption in certain

circumstances; Rule 109 provides for fee for late-dosing licences granted to licensed hotels and restaurants; and Rule 110 is a mere supplement to Rule 109 in so far as it provides for levy of fee for temporary late-closing licences. Rule 111 is a composite Rule, the first part of which deals with licence of wholesale vend of denatured spirit and the second part with retail sale or possession thereof. The last rule, namely, Rule 112(1) deals with licence to compound and blend foreign liquor " whereas Sub-rule (21) prescribes licence fee for bottling foreign liquor for sale. It will be seen that whereas Rules 106, 108 (1), 109, 110, 111 (first part) and both Sub-rules of Rule 112 prescribe for lump sum payment by way of licence fee either per annum per month or per diem payable in advance as the case may be, on the contrary Rule 107 and the Second part of Rule 111, both of which deal with retail sale, have prescribed fees in correlation to the quantum of liquor or denatured spirit sold or possessed. So that, while Rule 107 and the second part of Rule 111 prescribe a fluctuating amount "by way of fee to be assessed periodically, all the remaining rules enumerated above prescribe a lump sum payment by way of licence fee payable in advance, which is not subject to any subsequent fluctuation. No question of any subsequent assessment on the quantum of the wholesale trade of liquor is, therefore, permissible under the provision of the Rule 106. Learned Standing Counsel No. 1 appearing on behalf of the respondents has urged that the import of Rule 106 should be taken as wider than that of the provisions contained in Rule 107 in so far as, according to submission, Rule 106 impliedly also covers the mode of calculation of licence fee as prescribed in Rule 107. In my opinion, the argument put forward by learned Standing Counsel No. 1 cannot be accepted without doing violence to the language of Rule 106 read with Rules 108, 109, 111 (Part I) and 112 in juxtaposition to the language of Rule 107 and the second part of Rule 111. The argument must be rejected for three reasons--

(i) That it is a well settled principle of interpretation of statutory rules that nothing is to be added, to, or taken from their language. Unless there are adequate grounds to justify the inference that the framers thereof intended something which they omitted to express, such an inference is wholly unwarranted. In the present case the language of Rule 106, specially in contradistinction to that of the other rules referred to above, is absolutely clear and unambiguous.

(ii) That even if it were ambiguous, it is well settled that taxing statute or Rules like all other Penal Statutes have to be strictly construed in favour of the subject.

(iii) That when the rule-making authority has used different language and has prescribed different modes of calculation in the different rules mentioned above, it would be only natural to presume that such a difference was deliberately put in and the provision of one excludes the applicability of the provision contained in the other.

In my opinion, therefore, the second point urged by Learned Counsel for the petitioner is also well founded.

8. It was next contended on behalf of the petitioner that the period for the licences granted having already expired, the subsequent demand made by the Excise authorities was not authorised by law. From the facts enumerated at the beginning of this judgment, it will be seen that the demand has been made by a notice dated the 16th April, 1970 whereas the two periods for which the licences had been granted had expired--one on the 31st March, 1969 and the other on 31st March, 1970. Learned Counsel for the petitioner urged that even if a tax could be levied with retrospective effect, a fee could not be so levied, especially because a person desirous of taking a licence would not have chosen to exercise that option had he known in advance the payment by way of fee that he would have to make at the time of the issuance of the licence. There seems to be substance in this point of the Learned Counsel also. But we propose to decide the case on the two points already discussed above and we do not propose to give any concluded decision on the third question raised.

9. In the result, therefore, the demand made by the notice dated 16th of April, 1970 contained in Annexure 2 and the order dated 17th of December, 1970 passed by the Member, Board of Revenue, contained in Annexure 3 to the writ petition in C.W.J.C. 42 of 1971 must be held to be bad and illegal and must be quashed by a writ of certiorari. C.W.J.C.896 of 1972

10. From the facts which will follow hereinafter, it will be seen that the points common in the previous writ application and this one are only the first two points which have already been dealt with because, on the facts of this case, the third point will not arise. The facts shortly stated are these. The petitioner has challenged the validity and legality of the demand made in letter No. 285 dated the 20th May, 1972 issued by the Superintendent of Excise, respondent No. 4, a copy of which has been marked Annexure 4 to this writ application. It is said that for the years 1970-71 and 1971-72 licences in form I were granted to the petitioner on deposit of a fee of Rs. 200/- plus Rs. 100/- deposited subsequently. But respondent No. 4, by his impugned letter dated 20th May, 1972, directed the petitioner to pay an additional sum of Rs. 90,431/-, calculating such fee in relation to the quantity of foreign liquor sold as a wholesale trader by the petitioner during the previous year. This demand has been challenged mainly on the two grounds which have been forwarded as the first two grounds of attack in C.W.J.C. 42 of 1971. For the reasons given in the decision in C. W. J. C. 42 of 1971 I think that this application must also succeed and Annexure 4--the demand under letter dated 20th of May, 1972--must be quashed. I accordingly hold that Annexure 4 is illegal and invalid and fit to be quashed. I accordingly allow both the writ applications, quash Annexures 2 and 3 of C. W. J. C. 42 of 1971 and Annexure 4 of C.W.J.C.896 of 1972 and further direct that the respondents do not give effect to the orders contained" therein. In the circumstances of these cases, however, I make no order as to costs,

N.L. Untwalia, C.J.

I agree.