

(2013) 01 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 20531 of 2012

M/s. Welcome Distillery Pvt. Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 12, 22D, 42, 9
Constitution of India, 1950 — Article 14, 166, 19(1)(g)

Citation : (2013) 20 GSTR 442 : (2013) 2 PLJR 486

Hon'ble Judges : Prakash Chandra Verma, J;J.N. Singh, J

Bench : Division Bench

Advocate : Y.V. Giri, Rajendra Kumar Giri, Ashish Giri and Pranav Kumar, for the Appellant; Lalit Kishore, for the Respondent

Judgement

Prakash Chandra Verma, J.—This writ petition has been filed against the order bearing No. 5359 dated 20.10.2012 (Annexure-10) issued by the respondent Secretary, Excise Department, Government of Bihar, Patna by which the licence of the petitioner bearing No. 2285 dated 21.6.2009 for wholesale supply of country liquor in the district of Jehanabad, Arwal, Nawada and East Champaran (Motihari) for the period from 1.7.2009 to 31.3.2012 (subsequently renewed up to October, 2012) has been cancelled and it has also been blacklisted on the ground of failure in supplying required quantity of country liquor. Learned counsel for the petitioner submitted that u/s 42 of the Bihar Excise Act, 1915 the authority who grants any licence may only cancel or suspend the same. He submitted that in the present case it is the Collector who had the authority to cancel the licence and not the Secretary as has been done by him which is liable to be set aside. He submitted that the law is clear and settled that where a power is conferred by statute upon a particular authority to do a particular act, it is that authority alone who can exercise the power and no one else. He further submitted that the licence of the petitioner was granted for the period from 1.7.2009 to 31.3.2012, vide Annexure-2, and it was renewed time and again and lastly for the period 1.10.2012 to 31.10.2012. He has further submitted that the

tender of the petitioner, submitted pursuant to the fresh tender notice dated 18.10.2012, was not being considered due to Clause-2.VI therein which provided for non-consideration of tenders of those tenderers whose licence had been cancelled earlier. Thus, if by the impugned order it was the grant, and not the licence, which was cancelled, the petitioner's fresh tender ought to have been considered without being affected by the said Clause-VI. However the same was not done and its fresh tender was rejected. He submitted that, even assuming (but not accepting) that the order of cancellation was as per provision of Section 22D, and not Section 42 of the Excise Act, yet the impugned order was not sustainable in the eyes of law, for the order has not been passed by the State Government as per the requirement of Article 166 of the Constitution of India. The impugned order is not expressed to be taken in the name of the Governor and thus amounts to violation of Article 166. He submitted that, moreover, the Secretary had no jurisdiction to declare petitioner as a defaulter under the Act and cancel the grant or the licence and therefore he has exceeded his jurisdiction in passing the impugned order.

2. Learned counsel for the petitioner further submitted that on 14.9.2012 the respondent Secretary had issued a show cause notice seeking clarification from the petitioner in respect of short supply made by it and after being satisfied with its reply, he had extended the licence of the petitioner from time to time and up to 31.10.2012. Hence, the effect of such extension obviously was that the past conduct of the petitioner stood condoned requiring no further action and as such the authorities was estopped from taking a contrary view later on. However, if after such extension the authorities intended to take any action against the petitioner, it was incumbent upon them to issue a fresh show cause notice disclosing the exact reasons for their such intention to enable the petitioner to defend its case. But the Secretary, without issuance of a fresh show cause notice, by the impugned order cancelled the licence and has blacklisted the petitioner having adverse civil consequences which is violative of Article 14 of the Constitution of India and liable to be set aside.

3. Learned counsel for the petitioner further submitted that it has become a rule of law that every administrative, quasi judicial or any order having adverse civil consequences must adhere to the doctrine of audi alteram partem which requires the decision making authority to record its reasons in support of the order it makes. It is the basic principle of natural justice which must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The authority is bound to deal with the defense of the party and give its reasons for acceptance or non-acceptance of the same. He further submitted that in the present case reply of the petitioner as contained in Annexure-5 had clearly raised legal issues arising in the case which were not dealt with at all in the impugned order and therefore the same is violative of Article 14 and liable to be set aside. He pointed out that in para-18 petitioner has specifically stated about various representations made to the authorities bringing to their notice the failure on their part to issue the required number of transport

permits. The representations are annexed as Annexure-12 series with the writ petition. In his show-cause dated 14.9.2012 petitioner had specifically referred to the legal provisions governing the field regarding import, export and transportation of country liquor. He submitted that the same has also been reiterated in paras-8 to 17 of the writ petition which clearly shows that the petitioner had supplied the country liquor exactly as per the quantity mentioned in the transportation permits that were issued to it which becomes evident from Annexure-6 Series and the short supply had been due to less numbers of transport permits issued by the Excise Superintendent. The entire aspect of wholesale manufacture and supply of country liquor is governed by the provisions of the Excise Act, the Rules made thereunder as well as the Bihar Country Liquor Bottling Rule, 2004 (hereinafter referred as the "Bottling Rule"). Section 9 of the Excise Act puts restrictions on import of intoxicants unless the State Government gives permission for its import. Section 12 provides for export, import or transportation of intoxicants only after issuance of permits for the same. Hence, he submitted that it was the duty of the excise officials and not the petitioner to make sure that adequate number of permits were issued to the petitioner so as enable it to transport required quantity of the country liquor.

4. Learned counsel for the petitioner further submitted that the impugned order cancelling the licence and blacklisting the petitioner is discriminatory and violative of Article 14 of the Constitution of India which is evident from perusal of Annexure-40 also read with the supplementary affidavit filed by the petitioner on 21.11.2012 wherein in para-3 the petitioner had clearly demonstrated the names of other suppliers in other zones who had also made short supply as alleged in the case of the petitioner. The authorities in their reply to the same have not denied this and yet have not taken action of either blacklisting or cancelling their licence. Thus, the impugned order bearing No. 5359 dated 20.10.2012 issued by the respondent Secretary, Excise Department, Government of Bihar, Patna is fit to be set aside.

5. Learned counsel for the respondents submitted that petitioner prayed for quashing of order dated 20.10.2012 (Annexure-10 to the writ petition) by which exclusive privilege granted to the petitioner vide letter No. 2235 dated 21.6.2009 for manufacture and wholesale supply of country liquor in the different districts for the period 1.7.2009 to 31.3.2012 and subsequently extended up to October, 2012 has been cancelled and petitioner has been blacklisted on the ground of its having been found guilty in the matter of short supply of liquor as per demand. The petitioner has further prayed for allowing it to participate in the process pursuant to the notice inviting tender dated 20.10.2012 and to consider its bid on merits. He submitted that at the initial stage of grant itself petitioner was found defaulter in the matter of supply of liquor as per demand and in this regard a show cause notice was issued to it which was found not satisfactory and accordingly its grant of special privilege was cancelled. Petitioner being aggrieved by the said order of cancellation had filed C.W.J.C. No. 14129 of 2009. The said writ application was heard and disposed of by a Division Bench of this Court vide

order dated 10.11.2009 by which the order of cancellation of the grant was quashed with certain observations/conditions. The relevant portion of the said order is quoted hereunder:--

It goes without saying that even during the trial period of three months the petitioner shall comply with all the terms and conditions of license and supply and if there be any violation requiring action as per law, the State will be at liberty to take action as per law against the petitioner for any such lapses. After the period of three months if the performance of the petitioner is found unsatisfactory during this period then the respondents will be again at liberty to proceed to take action against the petitioner for its lapses particularly for short supply of country made liquor.

In the compliance to the aforesaid order of Hon'ble Court the grant/licence of the petitioner was restored and petitioner started operation of the licences in the aforesaid four districts. After restoration of the grant/licence the petitioner again defaulted and its performance with regard to supply of liquor was found not satisfactory. It is stated that on account of short supply of liquor much difficulty was faced in the concerned districts. The petitioner during the relevant period never supplied the required quantity of liquor as per demand and thereby the petitioner has thoroughly contravened the relevant conditions of the grant/licence. In this regard vide department's letter No. 4457 dated 14.9.2012 explanation was called for from the petitioner in compliance of which the petitioner submitted its show-cause dated 8.10.2012. The show cause submitted on behalf of the petitioner was thoroughly examined and the same was found not satisfactory. The petitioner in paragraphs 11 to 14 of its show cause has tried to show its innocence in the matter but from the papers available on the record it is clearly established that the petitioner during the relevant period has completely failed to supply the required quantity of liquor as per demand and in this way the petitioner has clearly contravened Condition Nos. 4(iii) and 4(v) of the relevant tender notice and also Condition No. 8(kha) of the licence granted to it in Form-27. The performance of the petitioner in the matter of supply of liquor has been found quite unsatisfactory and further the petitioner has been found habitual defaulter in the matter. Therefore, after due consideration of the entire materials available on the record including the show cause of the petitioner the grant/licence of the petitioner has been cancelled and the petitioner has been blacklisted vide reasoned order dated 20.12.2012. The impugned order dated 20.12.2012 is based on facts and law and there is nothing wrong in it.

6. Learned counsel for the respondent further submitted that the writ application of the petitioner is frivolous and not tenable. The petitioner has tried to show his innocence in the matter of short supply, but as stated above the papers available in the department clearly indicated that the performance of the petitioner in the matter of supply of liquor was not satisfactory. The grant/licence of the petitioner has been rightly and validly cancelled. The petitioner firm has been found to be not a fit firm to hold an excise licence in Bihar and therefore the petitioner has

been rightly blacklisted. The impugned order cancelling the grant/licence of the petitioner and blacklisting cannot be said to be without jurisdiction or violative of Article 14 or 19(1)(g) of the Constitution of India as alleged by the petitioner. It was submitted that the Government is fully competent to cancel an excise licence finding breach of any of the terms and conditions of the licence on the part of the licensee. As per conditions of the tender notice itself the petitioner was required to keep sufficient stock of liquor to meet the requirement but the petitioner has completely failed to do so. The petitioner from the very beginning was found defaulter in supplying the liquor as per demand and at the initial stage of the grant itself its grant/licence had been cancelled, but subsequently in terms of the order of the Hon"ble Court passed in CWJC No. 14129/2009 referred to above its grant/licence was restored with certain conditions but again the petitioner started defaulting in the matter of supply of liquor. It was submitted that as held by the Hon"ble Supreme Court in the P.N. Kaushal and Others Vs. Union of India (UOI) and Others, dealing in intoxicants is not a trade or business within the meaning of Article 19(1)(g) of the Constitution of India and the trade in liquor has historically stood on a different footing from other trades. It is well settled that citizens cannot have fundamental right to trade or carry on business in the properties or rights belonging to the Government and since the Government is the exclusive owner of the privilege to sell the liquor, reliance on Article 14 or 19(1)(g) becomes irrelevant. It was further submitted that there is no violation of the principle of natural justice as alleged by the petitioner. The petitioner had been given sufficient opportunity to have its says in the matter and after careful consideration of the entire materials available on the record and the show cause of the petitioner the impugned order of cancellation and blacklisting has been passed. The impugned order is a reasoned order based on law and facts and is thus sustainable. In such circumstances the grievances of the petitioner is frivolous and not tenable.

7. Learned counsel for the respondents further submitted that the grant for manufacturing of wholesale supply of country liquor in the aforesaid districts was given to the petitioner u/s 22D of the Bihar Excise Act. As per the said Act, the said grant is given on the directions of the State Government. As per the terms and conditions of tender notice and the grant petitioner was under obligation to manufacture and supply the country liquor to Beverages Corporation as per import sanction orders issued by the respective Excise Superintendent of the District. However, the petitioner has been at fault in lifting the rectified spirit against the import sanction order issued to it. In this regard a computerized chart of all the four districts showing import sanction order and short fall in lifting the rectified spirit has been enclosed as Annexures-B and E, which are also being enclosed with this notes of argument for ready reference.

8. Learned counsel for the respondents further submitted that Clause 4(v) of notice inviting tender gives power to State Government to cancel the grant of the petitioner without giving any show cause notice, if petitioner fails to manufacture and supply country liquor as per sanction order given to it. He further stated that

there is nothing wrong in the impugned order which is based on facts and law. The petitioner has been found to be habitual defaulter in the matter of supply of liquor as per contract. There is no question of mala fide as alleged by the petitioner. It was submitted that the respondent authorities have acted in the matter fairly in good faith and in accordance with rules. The petitioner has been found not fit to hold an excise licence on account of its conduct in the matter of running of the grant/licence in accordance with rules. The petitioner cannot claim as a matter of right to hold an excise licence. The petitioner has unnecessarily challenged the jurisdiction of the State Government in the matter of cancellation of licence and blacklisting it. He has further submitted that there is no question of discrimination. Each and every case has to be examined on its own merits. The petitioner cannot take advantage in the matter of short supply by other grantees of the State of Bihar. Moreover, the case of the petitioner is on different footing. As stated above, the grant of the petitioner was initially cancelled in the year 2009 itself due to its failure to supply liquor as per demand and the grant in question was subsequently restored on the orders of the Hon''ble Court on certain conditions. In terms of the orders of the Hon''ble Court the petitioner after restoration of the grant was necessarily required to supply liquor as per demand but it has failed to do so. As the petitioner was proved to be a habitual defaulter in the matter its case could not be equated with other grantees of the State. Learned counsel for the respondents finally submitted that the grievances raised by the petitioner are frivolous, vexatious and not tenable in the eye of law and the instant writ application is liable to be dismissed. Considering the facts and circumstances and the submissions made on behalf of the parties, we find that it is a clear cut case of violation of the relevant terms and conditions of the grant on the part of the petitioner. The impugned order of cancellation and blacklisting is a reasoned order based on facts and therefore the challenge raised is unsustainable. The petition being devoid of merit is dismissed.