(2003) 08 JH CK 0093

In the Jharkhand High Court

Case No : Writ Petition (C) No''s. 2251, 2302, 2420 and 2442 of 2002

Nand Kishore Jaiswal etc. — APPELLANT

Vs

State of Jharkhand and Others etc. — RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 22, 22D

Citation : (2003) 4 JCR 634

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Anwar, Altaf Hussain and M.S. Ahmed, in WP C 2251/02, Y.V. Giri and Dhananjay Kumar Duibey, in WP C No. 2420 and 2442 and S.B. Gododia, M.K. Dey and Sumit Gododia, in WP C 2302/02, for the Appellant; B.S. Lal, AAG and M.M. Banerjee, A. Sen and P.S. Dayal, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—As all these cases arise out of a common Notice Inviting Tender (N.I.T. for short) and almost similar questions raised, they were heard together and are being disposed of by this common order.

2. By the order of the Member, Board of Revenue, Ranchi, the Commissioner of Excise, Jharkhand, Ranchi issued one N.I.T. Gazetted on 12th January, 2002, published in the News paper "Prabhat Khabar" on 21st January, 2002, inviting tenders for bottling/sacheting and wholesale supply of country liquor for the period from 1st April, 2002 to 31st March, 2005, interested parties were asked to submit tender papers by 3 p.m. on 16th February, 2002.

The petitioner - Nand Khisore Jaiswal of W.P. (C) No. 2251 of 2002 has challenged the aforesaid N.I.T. published in the newspaper "Prabhat Khabar" on 21st January, 2002 on the ground that it is beyond the competence of the Member, Board of Revenue, Ranchi or the Commissioner of Excise, Jharkhand, Ranchi.

The said petitioner also sought for a declaration that the Jharkhand Government has no power to levy excise duty on rectified spirit/country spirit, but the said prayer at Clause ''B'' to paragraph-1 of the said writ petition was not pressed by the counsel for the petitioner-Nand Kishore Jaiswal at the time of hearing of the case.

The respondents having granted exclusive/special privilege u/s 22D of the Bihar Excise Act, 1915 in favour of some of the persons, namely, (1) Ramji Prasad; (ii) M/s. Majestic Liquor Pvt. Ltd; (iii) M/s: K.D. Liquor and Fertilisers Pvt. Ltd.; (iv) Kumar Bottlers Pvt. Ltd; and (v) Abhay Kumar, the petitioner have also challenged the orders.

3. The main question raised in WP (C) No. 2251 of 2002 is whether the Member, Board of Revenue, Ranchi has jurisdiction to grant exclusive/special privilege for bottling/sacheting and whole sale supply of country liquor u/s 22D of the Bihar Excise Act, 1915 or not.

4. The petitioner, Nand Kishore Jaiswal of WP (C) No. 2251 of 2002 has challenged the N.I.T. dated 12th January, 2002 on the following grounds :

(i) u/s 22 of the Bihar Excise Act, 1915 and rules framed thereunder, it is only the State Government who is competent to grant exclusive/ special privilege for bottling/sacheting and whole sale supply of country liquor, the Member, Board of Revenue, Ranchi or the Excise Commissioner, Ranchi has no jurisdiction to issue N.I.T., nor has any jurisdiction to grant such exclusive/ special privilege;

(ii) By notification No. 470-F dated 15th January, 1919, the State Government delegated certain powers to the Member, Board of Revenue or the Excise Commissioner of the State to grant exclusive privilege of manufacture and sale of country liquor u/s 22 of the Bihar Excise Act, 1915, it is not applicable for grant of exclusive/special privilege u/s 22-D of the Bihar Excise Act, 1915;

(iii) The N.I.T. dated 12th January, 2002, has been issued in violation of Clause 21-B, Chapter V of the instruction issued by the Board of Revenue under the Bihar Excise Act, 1915.

5. Mr. M.S. Anwar, learned counsel for the petitioner - Nand Kishore Jaiswal submitted that Section 22D of the Excise Act, 1915 having been incorporated vide Act No. 6 of 1998, it cannot be presumed that the Legislature delegated such power, vide notification No. 470-F dated 15th January, 1919.

6. For determination of the issue whether the Member, Board of Revenue has jurisdiction to grant exclusive/special privilege u/s 22D or not, one should notice the provisions of Section 22 and 22D of the Bihar Excise Act, 1915, which reads as follows :

"(22). Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs or denatured spirit or any other intoxicant--(1) The State Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege --

(a) (i) of manufacturing or supplying wholesale, or

(ii) of manufacturing and supplying wholesale, or

(iii) of selling wholesale or retail, or

(iv) of manufacturing or supplying wholesale and selling retail, or

(v) of manufacturing and supplying wholesale and selling retail, any country liquor or intoxicating drug with any specified local area, or

(b) of manufacturing, storing, using, possessing, exporting, importing including wholesale or retail sale of liquor which after manufacture is denatured to render it unfit for human consumption and is thereby termed as denatured spirit, and any other intoxicant :

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objection made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under Sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector or the Excise Commissioner.)"

("22-D. Grant of exclusive/special privilege for bottling/Sacheting and wholesale supply of country liquor.--(1) The State Government may grant to any person/ persons on such conditions and for such terms and conditions and for such period as it may think fit, the exclusive/special privilege for supplying country liquor, on wholesale basis, after sacheting/bottling it. These may be more than one grantee in a zone of supply.

2. No Grantee of any privilege under Sub-section (1) shall exercise the same unless he has received a licence in that behalf from the Board of Revenue/Excise Commissioner/Collector.

3. A licence fee shall be paid in advance in one lump sum by each licensee of the zone determined by the Member, Board of Revenue/Excise Commissioner at the rate of Rupee 1 per L.P. litre calculated on the basis of the annual M.G.Q. Additional licence fee shall be paid by each licensee of the zone if the total wholesale supply of the country liquor in the zone exceeds the annual M.G.Q. which would also be calculated at the rate of Rupee 1 per L.P. litre on the excess quantity.

4. x x x x x x"

7. Section 22D deals with not only grant of exclusive/special privilege "for bottling/sacheting" but also grant of exclusive/special privilege for ''whole sale supply of country liquor.''

Section 22 also deals with grant of exclusive/special privilege, not only relates to "manufacture", but also "whole sale or retail supply" of country liquor. For the purpose of grant of exclusive/special privilege for wholesale supply of country liquor", the power being delegated with the Member, Board of Revenue under Sub-section (1) to Section 22, it is open to the Member, Board of Revenue to grant such exclusive/special privilege for "whole sale supply of country liquor after bottling/sacheting" u/s 22D of the Bihar Excise Act, 1915.

From Sub-section (2) to Section 22D, it will be evident that any privilege under Sub-section (1) to Section 22D can be exercised by a grantee only if the grantee receives a licence in that behalf from the Board of Revenue/Excise Commissioner/ Collector. The licence fee which is to be paid in advance in one lump sum by each licensee is also to be determined by the Member, Board of Revenue/Excise Commissioner under Sub-section (3) to Section 22D of the Bihar Excise Act, 1915.

Thus, if Sub-section (1) to Section 22D is read with Sub-section (2) and (3) of Section 22D of the Bihar Excise Act, 1915 and the Notification No. 470-F dated 15th January, 1919, it will be evident that it is within the jurisdiction of the Member, Board of Revenue/Excise Commissioner to issue N.I.T. and to grant exclusive/special privilege for bottling/sacheting and whole sale supply of country liquor.

8. The question, as raised by petitioner - Nand Kishore Jaiswal is, thus, answered, in affirmative, against the petitioner. He having not applied in pursuance of N.I.T. dated 12th January, 2002, no relief can be granted in his favour.

9. So far as the claim of other petitioner, namely, Kali Impex Pvt. Ltd. (WP [C] No. 2420 of 2002 & WP [C] No. 2442 of 2002) and Rajeshwar Kumar (WP [C] No. 2302 of 2002) is concerned, no relief can be granted in their favour for the grounds discussed hereunder.

10. In the N.I.T. apart from other, the following eligibility criteria were laid down by the Respondents :

(ii). A person was required to submit proof of deposit of Rupees five lakhs as security money through Challan/N.S.C.

(iii) A person was required to produce income Tax Certificate granted after publication of the tender notice;

(iv) A person was required to submit Wealth Tax Certificate after publication of tender notice;

(v) A person was required to submit proof to suggest that the person is a Sales Tax payee and in the case of new businessman or non-assessee, it was required to submit "No Objection/ Clearance Certificate";

(vi) The Certificate of Registrar of Companies, in case of a company to show that the company is not under liquidation, Solvency Certificate of Rupees Thirty five lakhs issued by Nationalised/Schedule Bank;

(vii) Project report showing infrastructure of machines, their capacities, source of supply of machines, price etc. indicating cost of the project; and

(viii) Source of capital expenditure and source of supply of spirit.

11. The respondents have brought to the notice of the Court that the petitioner-Kali Impex Pvt. Ltd. failed to submit solvency certificate of Rs. 35 lakhs from any nationalized Bank in proper form. It only submitted a conditional assurance certificate for grant of loan amounting to Rs. One Crore, that too by a private Financial institution, without any documentary proof in its support. The said petitioner - Kali Impex Pvt. Ltd. also failed to submit wealth tax clearance certificate as per the mandatory provisions aforesaid.

12. The respondents have also brought on record that the petitioner - Kali Impex Pvt. Ltd. of WP (C) No. 2442 of 2002 is a Company registered under the Companies Act in West Bengal. It was required to submit proof of its distillery in West Bengal as per condition 1 (GHA) of N.I.T., but it failed to produce such proof.

The respondents have rightly pleaded that the petitioner - Kali Impex Pvt. Ltd. cannot claim to be a Non-distillery Company of the State of Jharkhand merely on the ground that it has a Branch Office at J.C. Malik Road, Hirapur, Dhanbad.

13. Admittedly, the petitioner - Kali Impex Pvt. Ltd. is not engaged in any kind of Alcohol Liquor business but it is engaged in the business of Jute materials. Its registered office is at 26, Burotolla Street, Kolkata - 700007 and thus cannot claim to be a Non-distiller of the State of Jharkhand merely because it has a Branch Office at Dhanbad.

14. So far as petitioner - Rajeshwar Kumar of WP (C) No. 2302 of 2002 is concerned, it does not fulfil many of the eligibility criteria as per N.I.T. He failed to quote the price of country liquor in a bottle of 600 ml. as was required under Condition 3(GHA) of the N.I.T. and also failed to submit wealth tax clearance in terms with Condition No. 12(KHA).

15. The aforesaid stringent eligibility criteria having not been fulfilled by Kali Impex Pvt. Ltd. and Rajeshwar Kumar, there was no occasion for the respondents to grant exclusive/special privilege in their favour.

16. There being no merit, all the writ petitions are dismissed. However, there shall be no order as to costs.

