
(2014) 06 PAT CK 0002

In the Patna High Court

Case No : CWJC Nos. 24646 of 2013 and 2807 of 2014

Nawal Kishore Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 PLJR 437

Hon'ble Judges : Rekha M. Doshit, C.J.;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Satyabir Bharti, Advocate for the Appellant; Lalit Kihore and Vikash Kumar, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.—These two Writ Petitions under Article 226 of the Constitution have been filed by the retail sellers of liquor. The challenge is against the direction of the Managing Director, Bihar State Beverage Corporation Limited (hereinafter referred to as "the Corporation") issued on 29th August, 2013 to recover distribution fee of Rs. 3/- per LPL (London Proof Liter) of foreign liquor and of Rs. 3/- per BL (Bulk Liter) of beer, from 1st April, 2013 to 16th April, 2013. Learned advocate Mr. Satyabir Bharti has appeared for the petitioners. He has submitted that the petitioners being the licensee for retail sale of foreign liquor/beer, they had purchased the stock from the Corporation at the maximum retail price fixed by the State Government and printed on the container. Under the terms of licence, they are supposed to make retail sale at the price printed and not more. Although the Corporation is not empowered to levy any fee upon the retail sellers, under the guise of distribution fee the Corporation seeks to recover the additional amount illegally and without authority of law.

2. In support of his submission, Mr. Bharti has relied upon Rules 20(iii) and 20(iv) of the Bihar Excise (Settlement of Licences for Retail Sale of Country Liquor/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop)

Rules, 2007.

3. The Petitions are contested by the State Government and the Corporation. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared for the State Government and the Corporation. He has vehemently opposed the writ petitions. Mr. Lalit Kishore has relied upon the liquor sourcing policy reproduced in the writ petitions. He has submitted that the licence fee for the manufacturers was enhanced under the Government Notification dated 7th December, 2012. However, commensurate enhancement in the retail price was not made upto 17th April, 2013. The Corporation had, therefore, to pay higher price to the manufacturers. However, it could not recover the price higher than the maximum retail price for the retail sale. The Corporation is, therefore, entitled to recover the amount of difference from the retailers. He has further submitted that the petitioners have failed to establish that the petitioners had not recovered the price higher than the fixed price from the retail buyers. The petitioners, therefore, should pay the distribution fee to the Corporation.

4. We are unable to agree with Mr. Lalit Kishore. The terms and conditions of the retail licence require the retail seller to sell the liquor to the retail buyers at a price not higher than the printed price. The presumption should be that the petitioners have sold the liquor at a price not higher than the printed price. If at all the Corporation has a dispute, the burden lies upon the Corporation to prove otherwise.

5. Mr. Lalit Kishore has failed to establish that the Corporation has a right to charge distribution fee from the retail sellers. In absence of any power conferred upon the Corporation, the Corporation was not justified in issuing the impugned direction dated 29th August, 2013 or in collecting the distribution fee from the retail sellers.

6. No other contention is raised before us. The Writ Petitions are allowed. The impugned order dated 29th August, 2013 issued by the Bihar State Beverage Corporation to collect the distribution fee is quashed and set aside. We may clarify that this order shall apply to the writ petitioners alone.