

(1986) 02 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Journ. Case No. 419 of 1985 (R)

Paras Nath Prasad

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1986 Patna 360 : (1986) PLJR 929

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : P.K. Sinha and D.K. Sarkar, for the Appellant; John Kandulna, Govt. Pleader no. 2 and Anil Kumar Lal, Jr. Counsel to Govt. Pleader No. 2, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—The petitioner has challenged the validity of the order contained in Annex. 2 whereby the license granted to the petitioner for running a Bar in his hotel and restaurant was withdrawn.

2. The sole ground of challenge is that before withdrawing the license, no notice was issued to the petitioner and he was not given an opportunity of hearing. Thus, the order contained in Annex. 2 has been passed in violation of the principles of natural justice. It is further contended that the requirement of producing a certificate from the Tourism Department was not a condition for the grant of a license, and, therefore, the order of withdrawal was passed on a non-existent ground.

3. The petitioner carries on business of Hotel and Restaurant in the name and style of "New Hotel and Restaurant" in the town of Chaibasa. A Bar license for the year 1984-85 valid up to 31-3-1985 was issued in favour of the petitioner. He was authorised to carry on the Bar in the said Hotel for sale of potable foreign liquor. On the strength of the said license, the petitioner started selling potable

foreign liquor in accordance with the terms and conditions of the license after paying all necessary fees and excise duties under the Act and the Rules. But without any notice to show cause as to why the license be not withdrawn for non-production of a certificate from the Tourism Department, an abrupt decision vide Annex. 2 was taken and the license was withdrawn on that ground. The petitioner, thereafter, also produced the certificate from the Tourism Department but the petitioner's business for sale of the foreign liquor remained stopped. On 15-2-1985, he made an application for renewal of the license for the next year 1985-86 and attached along with it a photostat copy of the certificate granted by the Tourism Department (Annex. 4) and the letter is Annexure 6.

4. The present writ application was filed on 17-4-1985. No interim order was passed. It was desired that the writ application will be disposed of at the admission stage. Notice was issued to the respondents but no show cause was filed and the facts stated in the petition have not been controverted. Counter-affidavit has not yet been filed. The matter was thus kept pending till November, 1985 and the petitioner's business in sale of the said foreign liquor suffered considerably.

5. From the impugned order it does not appear that the petitioner was heard in the matter before the order of withdrawal of his license was passed. This position has been not controverted. On that ground alone, the order contained in Annex. 2 is fit to be quashed. Further, production of a certificate from the Tourism Department is not a condition mentioned in the condition of the license contained in Annexure 1. Since, there is no counter-affidavit and this position is not controverted even today, I find it difficult to reject the petitioner's contention that the impugned order was passed on a non-existent ground.

6. In the case of *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, the Supreme Court held :

"where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew, the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must."

"Such a decision in violation of the minimum principle of natural justice would be void."

7. In the present case, no opportunity of hearing was given to the petitioner before withdrawing the licence. Therefore, the order of withdrawal of licence was in clear violation of the principles of natural justice, and on this short ground alone, this petition must succeed. In view of the application for renewal of the licence for the 1985-86 contained in Annex. 6 and further statement that also similar application for renewal of the licence for the period 1986-87 is pending

with the Authorities concerned, I direct that those applications for renewal of the licence shall be considered by the Authorities concerned in accordance with law within a period of one month from the date of receipt of this order. I hope and trust that while considering the question of such renewal, the Authorities concerned shall keep in mind that the petitioner's business considerably suffered on account of the illegal order and this writ petition remained pending because of unnecessary adjournments sought by the State in this matter.

8. In the result, the impugned order dt. 5-1-1985 contained in Annex. 2 passed by the Assistant Commissioner of Excise, Singhbhum is quashed and the writ application is allowed with costs with the directions indicated above.