(2007) 01 PAT CK 0031

In the Patna High Court

Case No : CWJC No. 4289 of 2006

Prem Nath Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:
Bihar and Orissa Excise Rules, 1919 — Rule 93A

Citation : (2007) 1 PLJR 612

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : S. S. Asghar Hussain, Dr. S.N. Jha and Ram Badan Mahto, for the Appellant; Priyadarshani Jha For the State, for the Respondent

Judgement

1. These two cases relate to the same establishment, namely, M/s Upama Chemical Industries engaged in the manufacture and sale of Ayurvedic medicines with alcoholic contents. CWJC No. 4289 of 2006 is filed by the proprietor of the establishment challenging the order of the Excise Commissioner rejecting his application for renewal of the manufacturing licence in Form LI issued under the Medicinal & Toilet Preparations (Excise Duties) Act, 1955 (hereinafter to be referred to as "the M.&T.P. Act") and seeking a direction from the Court for renewal of the license. The other case being CWJC No. 4518 of 2006 is filed by the proprietor of the unit besides three others who are wholesellers and retailers of the produce of the unit. This case relates to the grant of licenses in Forms 13 and 13A issued under rule 93A of the Bihar Excise Act. The controversy relating to the renewal of the manufacturing licence in Form LI, given to the proprietor of the establishment under M.&T.P. Act, is now over a decade and a half old and the matter has come to the Court for the third time. The sole petitioner in CWJC No. 4289 of 2006 obtained the licence in Form LI on 20.11.1989 for the period 1989-90. On expiry of the period he made an application for its renewal and also deposited the requisite renewal fee. He was not granted renewal of the licence in view of the general order passed by the Excise Commissioner vide his memo No. 2370, dated 16.5.1990 directing all the Collectors/Deputy Commissioners not to

renew the licences under the provisions of the M.&T.P. Act for the year 1990-91 in respect of Ayurvedic preparations which were capable of being used as ordinary alcoholic beverage. The petitioner then came to this court challenging the general order passed by the Excise Commissioner in CWJC No. 4739 of 1990. During the pendency of that writ petition the petitioner''s application for renewal of his licence was rejected by an order passed separately. In view of this development an amendment petition was filed in the pending writ petition seeking to challenge the order by which the petitioner''s application for renewal of licence was turned down. That writ petition was allowed by a Bench of this court by judgment and order, dated 23.9.1991. The operative portion of the order as contained in para 11 is reproduced below :

"For the reasons stated above, the impugned order dated 9th August, 1991 (Annexure 15) is quashed. The matter is remitted back to the Excise Commissioner for passing a fresh order on the renewal application after giving an opportunity of hearing to the petitioner. The petitioner, in the meantime, will be permitted to carry on manufacturing process under the supervision of the Excise Officers and complying with all the requirements prescribed under the Act or the Rules and shall also comply with all lawful direction issued by them from time to time."

2. After remand by the High Court the Excise Commissioner considered the matter of renewal of the licence and once again rejected it by order, dated 20.8.1993. The order of the Commissioner came under challenge before the court in CWJC No. 8797 of 1993 filed by the proprietor of the establishment. It appears that the Commissioner had rejected the petitioner''s application for renewal taking into account certain seizures made at Dhanbad of Ayurvedic medicines said to have been produced by the petitioner''s establishment. Samples of the seized goods were sent for chemical analysis and the chemist''s report showed that the samples were substandard or those did not subscribe to the statutory norms. The petitioner challenged the order of the Excise Commissioner, inter alia, on the ground that a copy of the chemist''s report relied on by the Commissioner was not given to him and hence, the order was made in violation of the principles of natural justice. That writ petition came up before a Bench of this court on 5.2.1993. On that date, the Court passed an interim order permitting the petitioner to continue its operations subject to the condition that it should be done under the supervision and control of the Excise Commissioner. The writ petition was finally allowed by judgment and order, dated 18.11.1993. The operative portion of the order is as follows:

"For the reason aforementioned, we quash the impugned order as contained in Annexure-12 and remit back the case for reconsideration of Respondent No. 2 in accordance with law. This writ application is allowed with the directions as above but without cost.

"Dr. Jha emphasised that we should quash the subsequent action, if any, taken by Respondent No. 2 or any other authority. We do not think necessary to do so in view of the apparent legal position emerging out of the quashing of the impugned order that the subsequent action taken becomes null and void.

"We clarify that if the Department of Excise intends to rely upon the report as contained in Annexure-26, it will bring it on the record and shall afford an opportunity to the petitioner to have his say."

3. From this stage, the matter seems to have been put out of sight till the Excise Commissioner finally passed the order on 19.1.2006 rejecting the petitioners'' application for renewal of the license. In the meanwhile the petitioner merrily continued to run the manufactory on the basis of the order passed in CWJC No. 8797 of 1993 till the unit was sealed on 31.8.2005 for various reasons. C.W.J.C. No. 4289 of 2006 is filed challenging the Commissioner''s order rejecting the request for renewal of the license in Form L-l.

4. The order of the Excise Commissioner appears to be quite unsatisfactory and it is also a reflection on the way the department is functioning. The Excise Commissioner has rightly observed that he had no hesitation in saying that the petitioner never wanted the case to be disposed of. But he stopped short of saying that the petitioner could succeed in his design only with the active help and collusion of some people in the Excise Department. The Excise Commissioner has observed that after twelve years there was no chance of getting a copy of the chemist''s report from Dhanbad (that now falls in the State of Jharkhand) for giving it to the petitioner. He, therefore, proceeded to dispose of the matter on the basis of the materials on record. He referred to a letter from the Dist. Magistrate, Vaishali in which recommendation was made for renewal of the licence to the petitioner but did not accept it. He finally rejected the application for renewal observing as follows:

"Perused the records available, it is evident that Licence Form L-l is not renewed since 1993. After a gap of 12 years or more, Collector has sent proposal of its renewal without recommendation. Here I am unable to accept the proposal of renewal on the ground that it has not been renewed since last 12 years and not a word has been said about it. As appears the proposal has been sent casually."

5. In the concluding portion of the order he has remanded the matter, in so far as the sealing of the unit was concerned, to the Collector, Vaishali with a direction to ''send fresh proposal with recommendation in Form LI explaining reasons of non-renewal and submit a report if desirable in two months taking into account the fact if the petitioner had been carrying out his business in the intervening years since 1993 in accordance with all the requirements prescribed under the relevant Acts and Rules''. With this the petition filed in pursuance of order passed in CWJC No. 11675/05 was disposed of.

6. Coming now to the other writ petition (CWJC No. 4518 of 2006), that is with regard to grant of licences to wholesellers and retailers of the produce of the establishment in Forms 13 and 13A under rule 93A of the Bihar Excise Rules, it may be noted here that on 3.8.1988 the State Govt, amended the Excise Rules

and inserted into it rule 93A containing some fresh provisions. The rule was intended to regulate the wholesale and retail sale of Ayurvedic medicines with alcoholic contents and also had a provision for the wholesellers and retailers to obtain licences on payment of the prescribed licence fee. The newly added provisions of rule 93A were struck down by this court as ultra vires the Excise Act. The State took the matter in appeal and the Supreme Court reversed the order of this court, upheld the validity of the provisions of rule 93A and permitted the wholesellers and retailers of Ayurvedic preparations with alcoholic contents to obtain licences on payment of arrears of licence fees @ Rs. 3000/- per year for a wholesale licence and Rs. 1000/- per year for a retail licence. This development has given rise to the controversy in CWJC No. 4518/2006.

7. It is submitted on behalf of the petitioners that the licence fees for wholesale licences for the years, 1989-90 to 2004-05 amounting to Rs. 3,18,000/- and for retail licences for the same period amounting to Rs. 43,000/- were deposited but the authorities had not issued the licences to the petitioners in this writ petition adversely affecting their business and the sale of the produce of M/s Upama Chemical Industries.

8. Counsel appearing for the sole petitioner in CWJC No. 4289 of 2006 submitted that the impugned order passed by the Excise Commissioner was prima facie bad and unsustainable in law. It was submitted that the sole ground assigned by the Commissioner for rejecting the application for renewal of licence in Form LI was that the licence had not been renewed for the past twelve years. It was pointed out that the responsibility for nonrenewal of the licence for such a long period did not lie with the petitioner but with the department itself. The High Court had remanded the matter in November, 1993 and the Commissioner could have passed an order within a few weeks or at the most a few months and in that case this situation would not have arisen at all. In other words, the petitioner was being penalized for something for which he was not at fault. Learned counsel also relied on the recommendation made by the Dist. Magistrate for granting renewal of licence to the petitioner and submitted that the Excise Commissioner had given no reason for not accepting the Collector''s recommendation.

9. In the other case it was submitted that even though licence fees for the entire period 1989-90 to 2004-05 were deposited, the authorities were sitting over the matter and were not issuing the licences (in Forms 13 and 13A) in an arbitrary manner.

10. Mrs. Priyadarshani Jha, counsel appearing for the State in both the cases submitted that under the cover of the High Court''s order the petitioner continued to run his manufactory in a highly irregular manner. She invited our attention to Annexure-M to the counter affidavit filed by the State in CWJC No. 4518 of 2006. Annexure-M is a list submitted by the petitioner of its wholesale dealers for the year, 1989-90. In this list only ten people/ agencies are shown as the wholesellers of the petitioner''s produce. She submitted that the number of wholesellers expanded from 10 in 1988-89 to 106 in the year 2004-05 as

appearing from the amount of licence fees submitted for grant of licence under Forms 13 and 13A. She also submitted that there was an apparent anomaly inasmuch as against 106 wholesellers there were only 43 retailers. She submitted that this suggested that the produce of the establishment was going into clandestine sale and was being abused for its alcoholic contents. She also referred to inspection reports, dated 29.3.1998 (Annexure ''O'') and 23.8.1999 that made highly adverse comments on the way the unit was functioning and found that the unit was not fit for renewal of licence.

11. Counsel for the petitioners submitted that any reference to the counter affidavits and the documents enclosed therewith was not quite relevant for the present for the simple reason that the impugned order of the Excise Commissioner had to be tested on its own merits and its correctness was to be judged on the basis of the reasons assigned in it. The impugned order cannot be defended on the basis of materials that are not even referred to in it.

12. The submission made on behalf of the petitioners cannot be said to be without substance. As observed earlier, the only reason assigned in the impugned order for rejecting the application for renewal is that the license was not renewed for the past 12 years. The order does not take into account the circumstances leading to that situation nor does it give any reason for not accepting the Collector''s recommendation. The order is quite unsatisfactory and appears quite untenable in the eyes of law. We would also not like to make any comments on the submissions made by Mrs. Jha and on the documents relied on by her. This is because eventually the question of renewal of licence has to be considered by the Excise Commissioner. We accordingly set aside the impugned order, dated 19.1.2006 passed by the Commissioner Excise, Bihar, Patna in Case No. 2 of 1993 and remit the matter to him for a fresh consideration in accordance with law.

13. As a consequence of setting aside the order of the Excise Commissioner, the status quo ante is restored and the Collector, Vaishali and the Excise Supdt. are directed to unseal the petitioner''s unit and to allow the petitioner to run the manufactory. The petitioner will do so under the strict control and supervision of staff deputed in the manufactory''s premises by the Dist. Magistrate/Excise Supdt., Vaishali. The petitioner shall maintain an accurate record of its production, sale etc. from running the manufactory on the basis of this order.

14. In the meanwhile the Excise Commissioner is directed to reconsider the question of renewal of the petitioners'' license in Form LI afresh, in accordance with law and in light of this order. In that regard it would be immaterial that the petitioner''s licence was not renewed for the past twelve to fourteen years. What would be more relevant and to the point is how the petitioner had conducted itself while running the manufactory by virtue of the order passed by the court. How far he observed the provisions of the Excise law and those of the M.&T.P. Act and the rules framed thereunder. Whether the produce of M/s Upama Chemical Industries were abused as alcoholic beverages? whether the petitioner was guilty

of evasion of excise duty or other charges payable to the State by clandestine sales of its produce and whether or not he was guilty of any serious breach of the provisions of the Excise law and the provisions of M.&T.P. Act and the rules framed thereunder? In this regard the Excise Commissioner may look into the earlier reports submitted by the Excise Officials/Dist. Magistrate. He may call for fresh reports from the Excise Officials and the Dist. Magistrate and take a final decision in the matter after giving an opportunity of hearing to the petitioner.

15. In order to facilitate an early disposal of the matter the petitioner is directed to appear before the Excise Commissioner, alongwith a copy of this order, within three weeks from today. The Excise Commissioner is directed to pass a final order within three months from the date of the petitioner''s first appearance before him. The further running of the unit shall abide by the final order passed by the Excise Commissioner on the issue of renewal of the L-l licence. In case the Excise Commissioner allows renewal of the licence, he would also give direction for continued running of the manufactory and would also proceed to consider the grant of licences under Forms 13 and 13A. The entire exercise must be completed within a period not exceeding three months from the date of the petitioner''s first appearance before him. In the result, these writ petitions are disposed of with the aforesaid observations and directions.

