(2007) 03 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5592 of 2006

Radhey Biscuits Pvt. Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 20, 22, 30, 31, 32

Citation : (2007) 2 BLJR 1921 : (2007) 3 JCR 85

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : D.V. Pathy and Abhishek Kumar, for the Appellant; I. Sen Choudhary, S.C.-III and Prabhat Kumar, J.C. to S.C.-III, for the Respondent

Judgement

Permod Kohli, J.—Petitioner was granted separate licenses for country liquor and spiced country liquor vends in the district of Dhanbad, constituting Group-I and also for Indian made Foreign Liquor etc., constituting Group-II for the period commencing from 15th December, 2004 to 31st March, 2005. These licenses were granted pursuant to acceptance of bid of the petitioner. This grouping was constituted pursuant to State Government''s Excise Policy formulated in the year, 2004. Under this policy, all retail country liquor and spiced country liquor shops, falling within a district, were clubbed in one group and all retail Indian made foreign liquor, wine and beer shops in another group. Settlement of the shops in Group-I and Group-II for grant of licenses was made through auction-cum-tender notice issued in Form-127.

2. After expiry of the period, these licenses were renewed for next financial year, ending on 31st March, 2006. It is the case of the petitioner that it applied for surrender of license in respect of Group-I vide application dated 27th February, 2006 in accordance with the provisions of Section 44 of the Bihar Excise Act. The surrender of license was sought on the ground indicated in its application, wherein, it was stated that since the settlement for manufacture and wholesale supply of country/spiced country liquor in the State of Jharkhand was not

concluded within time, the supply of country liquor remained interrupted from the period June, 2005 till October, 2005 and, thereafter, no supply of spiced country liquor beyond October, 2005 was made as the manufacture and wholesale license of spiced country liquor remain unsettled. It is alleged that the petitioner did not open its shops during the said period due to non-supply of liquor and suffered heavy losses. The application for surrender made to respondent No. 4 came to be rejected vide Memo No. 415 dated 31st March, 2006 and petitioner was directed to pay the license fee for both the groups. It is stated in this order that since the settlement was made for both the groups as one block for three years up to 31st March, 2007, petitioner''s request for surrender of license one year before the date of expiry can not be accepted. Consequently, the petitioner was directed to deposit Rs. 6,87,24,703.00 (Rupees six crores eighty seven lacs twenty four thousand and seven hundred three only) so as to renew the licenses for both the groups for the year, 2006-2007. It is further stipulated that failing this, action under the rule shall be initiated. Respondent No. 4 vide his letter dated 4th March, 2006 communicated respondent No. 3 that the licenses for both the Groups-I & II, issued in favour of the same person/firm, be renewed simultaneously and it should not be renewed leaving one group. Aggrieved of the order dated 4th March, 2006 petitioner preferred W.P.(C) No. 1634 of 2006. This writ petition came to be disposed of vide order dated 10th April, 2006 with the following directions:

20. In the facts and circumstances of the case, I dispose of this writ petition by passing the following order:

(i) The Government has exclusive privilege to lake a policy decision time to time and put conditions which a licensee has to carry on unless it is wholly arbitrary and capricious.

(ii) I hold that the holder of a license, like the petitioner, is entitled under the law to surrender any license in accordance with procedure provided u/s 44 of the Act. Hence, the competent authority and the Excise Department is directed to take a decision on the application filed by the petitioner for surrender of license within two weeks from the date of receipt, production of a copy of this order.

3. In the light of the aforesaid directions, petitioner again moved an application before respondent No. 4 on 4th May, 2006. This application also came to be rejected vide order dated 4th May, 2006 passed by respondent No. 4 on the ground that the application of the petitioner already stands rejected. This order of respondent No. 4 was challenged by the petitioner before the Member, Board of Revenue, State of Jharkhand, in Revision Case No. 54 of 2006. The Member, Board of Revenue, after referring to the judgment of this Court in W.P.(C) No. 1643 of 2006, observed:

Thus, the right of a licensee to surrender a license in accordance with the procedure provided u/s 44 of the Act stands settled.

The Member, Board of Revenue, further rejected the contention of the State that the licensee cannot surrender the license before expiry of period of three years for which the contract was settled. It further observed that Section 44 does not recognize any term as the "period of settlement", the license being for one year renewable each year and, thus, the authorities cannot justify refusal to permit surrender on the ground that settlement was up to 31st March, 2007. The Member, Board of Revenue, however, rejected the review application on the solitary ground that the petitioner admitted on oath through an affidavit-cum-indemnity bond dated 7th April, 2006 that there were dues outstanding against him, undertaken to pay an amount of Rs. 6,87,24,703/-(Rupees six crores eighty seven lacs twenty four thousand seven hundred and three only) and, thus, the license can not be surrendered unless due amount is paid, as per the provisions of Section 44(1)(b) of the Bihar Excise Act.

4. It is this order of the Board of Revenue dated 18th September, 2006, which is now under challenge in this writ application. Petitioner has also placed on record details of the amount, paid by it from the date of commencement of the license through Annexures- 6 & 7 of the writ application. These details contain the date and number of Chalan and the amount represented by each Chalan and according to the learned Counsel for the petitioner, the entire amount represented by the affidavit-cum-indemnity bond having been paid, the Member, Board of Revenue, was required to consider the plea of the petitioner, raised before it with documentary evidence, but the Member, Board of Revenue, has committed a glaring illegality in not considering the proof of payment of the license fee for the period of license for the year, 2005-2006, and has illegally rejected the revision only on the basis of affidavit/indemnity bond, which was otherwise procured from the petitioner by exercising threat/coercion with a view to force the petitioner to carry on business for Group-I also along with Group-II. It is alleged that the petitioner was threatened that its license for Group-II will not be renewed unless such document is furnished and to secure the renewal of license of Group-II (Indian made Foreign Liquor, Beer etc.) the Director of the petitioner-company executed this document, though no license fee was payable in respect to Group-I license, the same having been deposited through various Chalans, including the adjustment of the advance amount of Rs. 3,60,35,700/- (Rupees three crores sixty lacs thirty five thousand and seven hundred only). Copies of Chalans have also been filed along with supplementary affidavit dated 17th November, 2006. It was in view of Annexures- 6 & 7 and the pleadings that this Court had stayed the recovery from the petitioner, vide order dated 18th November, 2006 and respondents were asked to file a supplementary counter affidavit, specifically stating about the license fee payable for the financial year 2006-2007 for Group-I.

5. Thereafter, through various orders parties were permitted to file their supplementary pleadings.

6. Counter affidavit as also supplementary counter affidavit have been filed by one Bihari Lal Mandal, Assistant Commissioner, Excise, Dhanbad, on behalf of the

Deputy Commissioner, Dhanbad i.e. respondent No. 4, inter alia, stating therein, that in the year, 2004 the Government of Jharkhand formulated a policy and a notification was issued for settling the licenses for country liquor and spiced country liquor, constituting group-I and that of the Indian Made Foreign Liquor (IMFL), beer, wine etc., constituting group-II in respect of all the retail vends of the district. It is further mentioned that the auction was for a block period of three years and since there was delay in issuing the notification, it was for the balance period out of three years in respect of the district of Dhanbad. Accordingly, the shops constituting group-I and group-II of the district of Dhanbad were settled in favour of the petitioner on 15th December, 2004. The licenses for each vends were issued up to 31st March, 2005 and were further renewed for the year 2005-2006 for both the groups. It is also stated that during the fag end of the year 2005-2006, four days before expiry of licenses in respect to group-I, the petitioner wanted to surrender its licenses for this group. This request was refused by the Deputy Commissioner, Dhanbad. The petitioner got his license renewed for the year 2006-2007 and since the petitioner''s license for the year 2005-2006 has already expired, hence there was no need to surrender the same. It is also the case of the respondents that since the settlement was for a block period of three years, the petitioner is bound to continue the business for the whole period of settlement in respect to group-I as under the policy where the settlement is for two groups a licensee is not entitled to surrender license of one group and is liable to pay the license fee for the entire block period. It is further case of the respondents that u/s 44 of the Excise Act, the petitioner has to clear all its dues of license fee payable by the licensee for the whole period for which a license would have been current but for such surrender. According to the respondents, as on 27th February, 2006 there were outstanding dues of license fee for group-I for the period 2005-2006 amounting to Rs. 3,96,39,270/- (Rupees three crores ninety six lacs thirty nine thousand two hundred and seventy only), his surrender application was liable to be rejected. In a later paragraph of the counter affidavit it is stated that as on 31st March, 2006 the outstanding dues of the petitioner for its license of group-I were to the tune of Rs. 5,28,52,360/- (Rupees five crores twenty eight lacs fifty two thousand three hundred and sixty only). It is stated that the petitioner was not entitled to adjust the advance license fee as it can be adjusted only in the months of October, November and December of the last year of the block period. Petitioner undertook to pay the outstanding amount of Rs. 6,87,24,703/- (Rupees six crores eighty seven lacs twenty four thousand seven hundred and three only) towards the license fee of group-I and group-II by executing indemnity bond dated 7th April, 2006 (Annexure 9 to the writ petition). While giving break up in paragraph No. 21 of the counter affidavit, it is stated that as on 7th April, 2006 there was an outstanding dues of Rs. 5,28,52,360/-(Rupees five crores twenty eight lacs fifty two thousand three hundred and sixty only) towards the license fee of group-I and an amount of Rs. 1,59,00,343/- (Rupees one crore fifty nine lacs three hundred and forty three only) towards the license fee of group-II and total amount was represented by indemnity bond, executed by the petitioner, though this amount was subsequently cleared. It is stated that since the license for the year 2006-2007 was also renewed and petitioner never applied for surrender of this license, his request for surrender could not have been accepted.

7. In the supplementary counter affidavit it is further mentioned that the petitioner''s letter dated 31st March, 2006 showing that the amount, wrongly deposited under group-II, be considered as adjusted in group-I, did not bear the signature of the receiving authority. It is further mentioned that u/s 44 of the Excise Act petitioner was required to deposit the entire license fee for the period of license on the date of making application i.e. 27th February, 2006 and the entire amount having not been deposited as on that date, it could not have surrendered the license. Otherwise also the license was surrendered only after the expiry of license period. According to the respondents, though the license is for a period of one year or part thereof, however, it is automatically renewed for the entire block period. In respect to the allegation of the petitioner that there was non-supply/erratic supply of country liquor and spiced country liquor during the period 2005-2006, it is stated that the petitioner never made any demand for regular supply of counter liquor. It is mentioned that there was regular supply up to 30th November, 2005. It is stated by the respondents that after 30th September, 2005 the Excise Department made arrangement for making supply from other districts where regular supply was going on.

8. In the first rejoinder dated 30th November, 2006 filed by the petitioner it has also been brought on record that the petitioner paid excess amount of Rs. 46,12,521/- (Rupees forty six lacs twelve thousand five hundred and twenty one only) in the financial year 2004-05 and also an advance amount of Rs. 3,60,35,700/- (Rupees three crores sixty lacs thirty five thousand and seven hundred only). These amounts were required to be adjusted on the surrender of the license i.e. on 31st March, 2006 for which an application was made on 27th February, 2006 conveying the intention to surrender the license with effect from 31st March, 2006 and, thus, there is no anomaly. It is further mentioned that wrong mentioning of group-II in the Chalan No. II dated 31st March, 2006 for an amount of Rs. 1,67,94,654/- (Rupees one crore sixty seven lacs ninety four thousand six hundred and fifty four only), as amount for group-II, was rectified and this amount was, accordingly, to be adjusted in group-I. It is specifically mentioned that the petitioner never applied for renewal/grant of licence of group-I for the year 2006-07 nor conducted any business of country liquor/spiced country liquor for the year 2006-07. As far execution of the indemnity bond is concerned, the amount mentioned therein, is said to be in respect of both the groups and not for group-I, as alleged. In further supplementary rejoinder dated 19th December, 2006 filed by the petitioner it is stated that the petitioner never made any application for renewal of license of group-I for the period 2006-07 and in terms of Board''s Notification No. 101 no such renewal is permissible unless an application for renewal of license is made. Petitioner has reiterated the stand that non-supply of country liquor/spiced country liquor beyond October, 2005 prompted the petitioner to surrender the license. It is also mentioned that

the facts sought to be introduced in the counter affidavits were never raised or pleaded before the Board of Revenue where the only plea raised was in respect of the period of settlement and demand for the entire period upto ending March, 2007.

9. I have perused the records of Dhanbad, Revision Case No. 54 of 2006 (Excise) of the Member, Board of Revenue, Jharkhand. In the revision application filed before the Board, petitioner had challenged the order contained in Memo No. 415/Excise dated 31st March, 2006 as also the order dated 4th May, 2006 passed by the Deputy Commissioner, Dhanbad, rejecting the application of the petitioner for surrender of license and also the prayer for declaring the license earlier granted to the petitioner as surrendered with a further direction to direct the refund of the license fee, deposited under protest. In this application the petitioner also pleaded the erratic supply of country liquor/spiced country liquor up to October, 2005 and its non-supply thereafter during the license period of 2005-06 due to non-settlement of manufacture and whole-sale supply of country liquor/spiced country liquor in the district of Dhanbad by the Government. The petitioner also pleaded payment of the entire license fee for the period of currency of license i.e. 2005-06 for group-I and also placed on records the details of Chalan numbers, amount represented by each Chalan as also the dates of Chalan to show the payment of entire license fee. The plea of the petitioner was resisted by the State-respondent firstly on the ground that the license is deemed to be for the entire block period i.e. from the year 2004 to 2007 and petitioner is bound to carry on business for the period of settlement of almost three years and is not entitled to surrender the license before expiry in respect of one group. In paragraph No. 14 of the counter affidavit it has also been mentioned that the petitioner has not cleared the dues of the State, which is in crores. From the proceedings of the Board it appears that the matter was heard on 25th August, 2006 and parties were directed to file information relating to the dues outstanding against the petitioner during the period of currency of license. However, the State produced the indemnity bond said to be executed by the petitioner and the matter was again heard on 6th September, 2006.

Consequently, the impugned judgment came to be passed on 18th September, 2006.

10. The issues before the Board of Revenue were whether the order of rejection of application for surrender by the Deputy Commissioner, Dhanbad, was legal and valid and whether the petitioner was bound to continue the business for the entire period of settlement. The Board in the impugned order, basing its findings upon the judgment of this Court in W.P.(C) No. 1634 of 2006, decided on 10th April, 2006, observed as under:

I do not find merit the argument of the Spl GP relating to the petitioner being a deemed holder of a license since settlement was made with him till 31st March, 2007. The settlement may have been made for any number of years but the license was issued each year, the license in question having been issued from 1st

April, 2005 to 31st March, 2006. The specific words used in Section-44 are "Any holder of a license". This section thus does not recognize any such term as "the period of settlement" and applies only to surrender of "license". The license granted to the petitioner for Group-I retail shops was to expire on 31st March, 2006 and it was this particular license that the petitioner wished to surrender. There is thus no question of the period of settlement having any relevance u/s 44 of the Act.

11. As regards the plea of the respondent-State that there was outstanding dues against the petitioner as on 31st March, 2006, the Board made the following observations:

A large number of documents, including treasury chalans, were submitted by counsel for the petitioner in support of his claim that all dues till 31st March, 2006 had been cleared by the petitioner. A number of documents were also submitted on behalf of the respondents by the Spl GP to controvert this claim of the petitioner.

xx xx xx Now the license in question was to expire on 31st March, 2006 which was also the noticed date of surrender. Under the circumstances, there was no further period for which the license would have been current after surrender. The petitioner as such had to clear all dues as on 31st March, 2006.

There have been many claims and counterclaims regarding dues made by both parties and both have submitted documentary evidence in support of their claims. While the Spl GP has submitted documents to establish that heavy dues were payable by the petitioner on 31st March, 2006, counsel for the petitioner has submitted documents to prove that no dues payable by the petitioner existed after the same date. In fact the counsel for the petitioner submitted various charts and figures and tried various permutations and combinations of payments made to convince me that there were no dues outstanding against the petitioner for either group-I or group-II shops on 31st March, 2006.

However, all these permutations and combinations fall in view of the petitioners own admission made under oath through an affidavit cum indemnity bond on 7th April, 2006 that there were dues outstanding against him on the above date. The petitioner under oath has admitted through this affidavit executed at Dhanbad on 7th April, 2006 that dues amounting to Rs. 6,87,24,703 were outstanding against him for the financial year 2005-2006. This affidavit cum indemnity bond has been placed in the record. Incidentally, the above admitted amount is exactly the same as the demand raised against the petitioner by the Deputy Commissioner cum Collector, Dhanbad vide her memo No. 415 dated 31st March, 2006.

12. I have heard learned Counsel appearing for the parties at length and also considered the written submissions filed by the parties. The Deputy Commissioner rejected the application of the petitioner vide Memo No. 415/ Excise dated 31st March, 2006 on the sole ground that the shops were settled

with the petitioner for group-I and group-II for the period 15th December, 2004 to 31st March, 2007 and since the request for surrender is made only for one group, it is rejected and the petitioner was, accordingly, asked to pay the outstanding amount of Rs. 6,87,24,703/- (Rupees six crores eighty seven lacs twenty four thousand seven hundred and three only) for both the groups so that the licenses for the period 2006-07 for both the groups be renewed. The Member, Board of Revenue, while deciding the revision application of the petitioner clearly observed that the petitioner is not bound for three years block period and is entitled to surrender the license in accordance with Section 44(1) of the Excise Act. It is the clear finding of the Member, Board of Revenue, that since the license is issued for the period of one year as contemplated under the Act, petitioner is not bound for three years period on the basis of the excise policy. This question already stands decided by this Court vide its judgment dated 10th April, 2006, passed in W.P.(C) No. 1634 of 2006, wherein, the Court held as under:

20. xx xx xx (ii) I hold that the holder of a license, like the petitioner, is entitled under the law to surrender any license in accordance with procedure provided u/s 44 of the Act. Hence, the competent authority and the Excise Department is directed to take a decision on the application filed by the petitioner for surrender of license within two weeks from the date of receipt/production of a copy of this order.

13. In view of this finding that the petitioner is entitled to surrender the license, which is granted for a period of one year, the plea of the respondents again raised in this petition that the petitioner is bound to continue the business of country liquor/ spiced country liquor for the entire block period is not sustainable; firstly the issue having been decided by this Court in the aforesaid writ application between the same parties, it operates as res-judicata and secondly the findings of the Member, Board of Revenue on this question have not been challenged by the respondent-State. On going into the details of the submissions of the parties on this question, I hold that the license granted for a period of one year can be surrendered in accordance with the provisions of Section 44(1) of the Excise Act.

14. The second plea, which is raised by the respondent-State, is that the petitioner''s application was not in accordance with the provisions of Section 44 of the Excise Act, as it was made on 27th February, 2006 for surrender of license. It is necessary to refer to the provisions of Section 44, which reads as under:

44. Surrender of licence.- (1) Any holder of a license granted under this Act to sell an intoxicant may, unless his licence is liable to cancellation or suspension u/s 42, surrender the same-

(a) on the expiration of one month''s notice in writing given by him to the Collector of his intention to surrender it, and

(b) on payment of the fees payable for the licence for the whole period for which it would have been current but for such surrender:

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for the surrender of a licence, he may remit to the holder there of the sum so payable on surrender, and any fees paid in advance of any portion of such sum or fees.

(2) Sub-section (1) shall not apply in the case of a licence for the sale of any country liquor or intoxicating drug in the exercise of an exclusive privilege granted u/s 22.

15. A reading of Section 44(1) clearly indicates that a holder of a license granted under this Act to sell an intoxicant, whose license is not liable to cancellation or suspension, is entitled to surrender on the expiry of one month''s notice in writing, given to the Collector of his intention to surrender and on payment of the fee payable for the license for the whole period for which it would have been current. The necessary ingredients contained in this Section are thus: (i) one month''s notice in writing and (ii) payment of the fee payable for the period of license.

16. Therefore, the question which the Deputy Commissioner was required to consider was (i) whether one month''s notice has been given to him and (ii) whether the petitioner has paid the license fee as on the date of surrender of license. As far the one month''s notice period is concerned, neither the Deputy Commissioner nor the Member, Board of Revenue, returned any findings that one month''s notice has not been given. The plea of the respondents that the application for surrender was made only four days before expiry of license is incorrect on the face of it. Admittedly, notice for surrender was given on 27th February, 2006 requesting for surrender with effect from 31st March, 2006, which is otherwise the date when the license expires. There are two aspects of the matter; firstly the request for surrender was made one month in advance and secondly the license also expires on expiry of one month period of notice. As far the payment of license fee is concerned, there is no condition in Section 44(1) that the payment of license fee should be made as on the date of the service of notice. It only imposes two conditions i.e. one month''s notice and payment of license fee. The payment of license fee could be a condition for the surrender to become operational. Assuming, in a case where the request for surrender of license is made in the mid of the period of license by serving one month''s notice and the authorities have not decided the application for surrender, whether the licensee is bound to pay the entire license fee and is prohibited in any manner from operating the license till the request for surrender is accepted, the answer simply is "No". It is only when the request for surrender is accepted then the licensee is bound to pay the fee for the period of license. The word used in Section 44(1)(b) is "on payment of fee payable". It does not speak of payment of fee in advance or at the time of making request. But on finalization of request of surrender the licensee is bound to pay the license fee.

In the present case, admittedly the request for surrender has not been accepted by the authorities. Therefore, it was not obligatory for the petitioner to have paid the license fee on 27th February, 2006. However, the petitioner has categorically stated that he has paid the entire license fee on 31st March, 2006.

17. The State in paragraph No. 13 of the counter affidavit dated 29th November, 2006 has mentioned as under:

13 ...As on 27.2.2006, there were outstanding dues of licence fee for Group-I for the period 2005-06 amounting to Rs. 3,96,39,270=00 (Rs. Three crores ninety six lacs thirty nne thousand two hundred seventy only).

Further in paragraph No. 18 of the counter affidavit, the following is mentioned:

18... As on 31.3.2006, the petitioner had an outstanding dues of licence fee for its licenses of Group-I amounting to Rs. 5,28,52,360 /-....

Further in paragraph No. 21 of the counter affidavit following is mentioned:

21. That in reply to the statement made in paragraph-16 of the writ petition, it is stated that as on 7.4.2006, there was an outstanding dues of Rs. 5,28,52,360=00 towards license fee of Group-I and an outstanding dues of Rs. 1,59,00,343=00 towards license fee of Group-II. Thus, the amount mentioned in the indemnity bond can be classified as:

Licence fee dues for 2005-06 Amount (Rs.) Group-I 5,28,52,360=00 Group-II 1,59,00,343=00 -------------- Total 6,87,52,703=00

18. The plea raised by the respondents is that this amount is outstanding without adjustment of the advance amount of Rs. 3,60,35,700/- (Rupees three crores sixty lacs thirty five thousand and seven hundred only). Even the claim of the petitioner that it paid an amount of Rs. 1,67,94,654/- (Rupees one crore sixty seven lacs ninety four thousand six hundred and fifty four only) on 31st March, 2006 in group-I but wrongly mentioned the same as the amount for group-II and requested for adjustment of this amount for group-I vide its request of the same date has not been considered. It is useful to notice paragraph No. 27 of the writ petition, wherein, petitioner has mentioned the payment of Rs. 1,67,94,654/- for group-I and a separate amount of Rs. 1,52,44,631/- for group-II vide Chalan No. I dated 31st March, 2006. Paragraph No. 27 of the writ petition is reproduced as under:

27. That the petitioner submits that due to inadvertence in one of the challans number 2 dated 31.03.2006 for Rs. 1,67,94,654.00 it had mentioned the same as payment against group-II license fee. In fact, this challan represented payment for group-I license. It is stated that on the same day in respect of Group-II license the petitioner had paid a sum of Rs. 1,52,44,631.00 by challan No. 1 of 31.03.2006. It is stated that the petitioner in a letter addressed to the Asst. Commissioner of Excise explained that the payment of Rs. 1,67,94,654.00 was in respect of group-I license. It needs to be mentioned that such

clarifications were made on the same day on which the challans were deposited. It is submitted that these payments require to be considered while calculating the outstanding dues against the group-I license.

19. As far the advance amount is concerned, the plea of the respondent-State is that the petitioner was not entitled to adjust the advance amount paid till the expiry of the block period i.e. at the end of 31st March, 2007. This plea does not seem to be sound and valid. The advance amount is made for the license period and if the license expires on 31st March, 2006 how could the respondents refuse to adjust advance license fee and retain the amount beyond the license period, particularly when the petitioner had applied for surrender of license or the license otherwise expires on 31st March, 2006. Petitioner was, thus, entitled to adjust the advance license fee at the end of license period or on surrender of the license. In any case, the availability of advance license fee of Rs. 3,60,35,700/- (Rupees three crores sixty lacs thirty five thousand and seven hundred only) with the respondents is not denied. As far the adjustment of Rs. 1,67,94,654/- (Rupees one crore sixty seven lacs ninety four thousand six hundred and fifty four only) is concerned, in paragraph No. 27 of the writ petition the petitioner has clearly mentioned deposit of this amount as also separate amount of Rs. 1,52,44,631/- (Rupees one crore fifty two lacs forty four thousand six hundred and thirty one only) for group-II by a separate Chalan. This fact has not been denied by the respondents in the counter affidavit. If the intention of the petitioner was to deposit Rs. 1,67,94,654/- for group-II, there was no necessity of making a separate deposit for group-II amounting to Rs. 1,52,44,631/- by a separate Chalan on the same date. Silence on the part of the respondents in the counter affidavit about a separate deposit for group-II justifies the plea of the petitioner that the deposit of Rs. 1,67,94,654/- was meant for group-I but wrongly mentioned in Chalan for group-II. The statement of the petitioner also seems to be correct in view of the averments made in paragraph No. 19 of the counter affidavit, which is reproduced hereunder:

19. That in reply to the statement made in paragraph-13 and 14 of the writ petition under reply, it is stated that it is wrong to say that there were no dues against the petitioner towards licence fee of Group-I. In fact, the petitioner was is always a defaulter in payment of licence fees and as on 31.3.2006 there was an outstanding dues of Rs. 5,28,52,360/-. It is also clear from the perusal of Annexure-9 that there was an outstanding dues of Rs. 6,87,24,703/- towards licence fee of Group-I and II against the licences of the petitioner. Prior to that the petitioner has given one stamped petition on 25.3.2006 requesting for time up to 31.3.2006 for depositing the balance of arrear of licence fees.

20. A perusal of this paragraph indicates that as on 31st March, 2006, the date of surrender of license, a sum of Rs. 5,28,52,360/-was due and payable by the petitioner for group-I license and the total liability for group-I and group-II, for which an indemnity bond was also executed, as on 31st March, 2006 was Rs. 6,87,24,703/-. Thus, according to the respondents, excluding the amount

payable for group-I the only liability for group-II as on that date was Rs. 1,58,72,343/-. If this was the only liability for group-II, there was no occasion for the petitioner to have deposited Rs. 1,52,44,631/- for group-II and also Rs. 1,67,94,644/- for group II on the same date when the total liability under group-II, according to the respondents own counter affidavit, was only Rs. 1,58,72,343/-.

21. This fact is further apparent from paragraph No. 21 of the counter affidavit, noticed hereinabove, wherein, the liability under group-II is shown to be Rs. 1,59,00,343/- as on 7th April, 2006, when the indemnity bond was executed. Going by the calculations given by the respondent-State itself the liability of the petitioner under group-II as on 31st March, 2006 was only Rs. 1,59,00,343/-and under group-I Rs. 5,28,52,360/- and, thus, the amount of Rs. 1,67,94,654/- could not have been meant for payment under group-II. The petitioner after payment of this amount also adjusted the advance amount of Rs. 3,60,35,700/- as on 31st March, 2006. The total amount of advance license fee i.e. Rs. 3,60,35,700/- and Rs. 1,67,94,654/-, said to be deposited for group-I, comes to almost equal to the amount, said to be outstanding against the petitioner under group-I. Unfortunately, despite availability of evidence on record, the Member, Board of Revenue, which is the final court of fact, has not looked into this aspect and merely relied upon the indemnity bond to reject the plea of the petitioner for surrender of license. The Member, Board of Revenue, also lost sight of the fact that the petitioner''s application was not rejected by the Deputy Commissioner, Dhanbad, on the ground of non-payment of license fee but on the only ground that the license is for the block period from 15th December, 2004 to 31st March, 2007. The document i.e. indemnity bond, said to be executed by the petitioner, was/is required to be looked into in the light of and on the basis of other evidence available on the record, namely, Chalans for payment of amount into the Government Treasury. It is not the case of the respondents that the amounts represented by various Chalans indicated in Annexure-7 and copies whereof have been placed on record before this Court and before the Board of Revenue, are either fake or do not represent the correct amount. Rather the only plea raised by the respondents is that the license could not be surrendered before 31st March, 2007 and the advance amount of license fee is not adjustable on 31st March, 2006. Such a plea cannot be accepted.

22. There is another aspect of the matter. Admittedly, the license for group-I was for a period of one year i.e. with effect from 1st April, 2005 to 31st March, 2006 and it came to end on 31st March, 2006. Even if there is no application for surrender by the petitioner, the license automatically expires on 31st March, 2006 and the advance license fee was adjustable.

23. Now I come to the plea of the respondents that the petitioner''s license has been renewed for the year, 2006-07. It is the specific case of the petitioner that it never asked for renewal of the license and never applied for the same. Section 20 of the Bihar Excise Act, 1915 provides for license for sale of intoxicants.

Sections 30 to 35 provide the procedure for grant of license at various places whereas Section 40 provides for execution of a counterpart agreement between the licensee and the authority, granting a license. Section 89 of the Act confers power on the State Government to make rules to carry out the object of this Act whereas Section 90 gives power to the Board to make Rules. The Board of Revenue has notified instructions under the Bihar & Orissa Excise Act. Chapter-III deals with the settlement and licenses. Rule 74 provides the term of license as one year to take effect from 1st April of the year. Rule 86 onwards deal with the settlement of shops by auction. Rule 88 provides for issuance of a sale notice in Form-127. Rule 97 prohibits settlement in lots whereas Rule 101 deals with settlement without auction of shops, usually settled by auction. Sub-rule (2) & (3) of Rule 101 prescribe procedure for renew, which reads as under:

101. Settlement without auction of shop usually settled by auction.- xx xx xx

(2) Procedure.- Under the above system, the licence fee for a calendar month is assessed according to a prescribed scale on the quantity issued for sale during that month. The fee is recovered in the following month. The following rules govern the settlements under this system.

(3) The settlement of a shop should continue with the existing licensee is his conduct and management during the year have been satisfactory and if he puts in by the 10th January an application for renewal of the license and furnishes particulars about his permanent residence (village, police-station, post office and district), father''s name and names of any other excise shops within the district or outside held by him, or in which he has any interest. All settlements for the new year should be concluded by the 1st March.

XX XX XX

24. From the above, it is clear that no license can be renewed unless an application is made in writing for renewal of the license by 10th of January of the year before expiry of license. It is nobody''s case that the petitioner made any application for renewal by 10th of January and asked for renewal of license beyond 31st March, 2006 in respect of group-I. Then how could the respondents of their own renew the license and impose liability of payment of license fee of crores of rupees upon the petitioner when it never expressed its desire for renewal of license nor applied in accordance with the procedure prescribed. It is also important to note that even counterpart agreement envisaged by Section 40 of the Bihar Excise Act has not been executed. The State while entering into contracts and granting licenses cannot behave as an autocrat and fleece the people by unfair means by use of coercive methods. Therefore, the plea of the respondent-State that the license of the petitioner stands renewed for the year 2006-07 and it has a right to recover the license fee is apparently a dishonest plea. This conduct of the respondent-State is to be viewed in the light of the specific averments of the petitioner that the petitioner was forced to pay the license fee for group-I also under the threat that its license for group-II will not

be renewed. There is no denial of these allegations in the counter affidavit. Petitioner made specific allegations in paragraphs 18, 19, 20, 23 and 26 of the writ application and paragraphs 3 and 6 of the supplementary affidavit dated 17th November, 2006 and these pleas have not been controverted in the reply. In view of the above circumstances, I allow this writ petition and quash the order dated 18th September, 2006 passed by the Member, Board of Revenue, as also Memo No. 415 dated 31st March, 2006, passed by the Deputy Commissioner, Dhanbad, and the communication dated 4th May, 2006 of the Deputy Commissioner, Dhanbad. Consequently, the license of the petitioner for group-I shall be deemed to have been surrendered on 31st March, 2006 or expired on that date by efflux of time. This is, however, subject to payment of full license fee by the petitioner for group-I for the year 2005-06. Consequently, the respondents are not entitled to recover any license fee in respect of group-I for the year, 2006-07. The license having not been renewed in accordance with the procedure prescribed under law and petitioner having not applied for the renewal, no liability of license fee for the year 2006-07 can be fastened upon the petitioner. This is particularly so because no supply of country/spiced country liquor was made to the petitioner during this period.

25. In view of above findings regarding adjustment of advance license fee and other amount said to be paid by the petitioner, the Member, Board of Revenue, is required to re-examine the question of payment of license fee for the financial year 2005-06 for group-I. The case is, accordingly, remanded to the Member, Board of Revenue, for reconsideration of question of payments made on the basis of Challans and deposits in Government Treasury. Let the Member, Board of Revenue, decide the matter within two months from the date of receipt of a copy of this order. The Records of the Board of Revenue be also sent back forthwith.

26. In the facts and circumstances of the case, there shall be no order as to costs.

