(1975) 07 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 934 of 1973

Ram Kishun Ram — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 07-07-1975

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 22, 22(1), 29, 29(1), 29(2)

Citation : (1975) 41 CLT 934

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Petitioner carries on business in country liquor. On 20th January, 1973, the outstill liquor shops at Nayagada, Dhatika and Kodagadia within the district of Keonjhar were put to auction for the year 1973-74. Petitioner was the highest bidder and the shops were settled with him. According to Petitioner, on account of undue competition and offer of speculative bids by one Biswanath Prasad, there was a steep increase in the auction money. Petitioner applied before the Board of Revenue for reduction of the consideration money by at least seventy five per cent so that out of the profits earned, the fee could be paid. Petitioner''s application was registered as Miscellaneous Case No. 12 of 1973 and after hearing both sides, the Member, Board of Revenue by order dated 4-6-1973 (Annexure-7) granted a reduction of 30 per cent as a result of which- the monthly bid amount of Rs. 10, 810/ - in respect of the three shops was reduced to Rs. 7, 567/ -. According to Petitioner, during the previous year 1972-73, the bid money for all the three shops per month was Rs. 4, 655/ -. On 24-10-1973, the Superintendent of Excise by letter (Annexure-8) intimated Petitioner that the reduction allowed by the Board could not be given effect to in view of the directions given by the State Government and required Petitioner to pay the difference. Thereupon, Petitioner has made this application for a writ of mandamus to the opposite parties to give effect to the statutory order passed by the Member, Board of Revenue.

2. In the counter affidavit filed by the Deputy Commissioner of Excise on behalf of opposite parties 1 to 3 and 5, it has been claimed that the provisions of the Bihar and Orissa Excise Act and in particular, Section 39 thereof had no application to the facts of the case. The Member, Board of Revenue, did not have jurisdiction to grant reduction inasmuch as the sums in consideration of the grant of exclusive privilege u/s 22 to Petitioner have been determined by the State/ Government and with regard to such sums, Section 39 of the Act has no application. It has been further alleged that the order of the Member, Board of Revenue, having been found by the State Government to be a nullity as it was passed without jurisdiction, instructions were issued to the District Authorities not to give effect to it. Since the order of the Member, Board of Revenue, is without jurisdiction, this Court should not issue a writ of mandamus to compel the answering opposite parties to give effect to the void order of the Board of Revenue.

3. The question for examination, therefore, is whether the Board of Revenue had jurisdiction to make an order in terms of Annexure-7 allowing reduction. Sections 22, 29, 38, 39, and 90 of the Bihar and Orissa Excise Act of 1915 (hereinafter referred as the "Act") as amended in Orissa are relevant for disposal of this case. There is no dispute that what was granted to Petitioner was the exclusive privilege of selling liquor as contemplated u/s 22(1) of the Act. u/s 29(1) of the Act, the State Government is authorised to accept payment of a sum of money in consideration of the grant of any exclusive privilege. Under Sub-section (2) of that section as amended, the sum payable under Sub-section (1) is to be determined by calling tenders or by auction or otherwise as the State Government may, by general or special order, direct and by such authority and subject to such control as may be specified in such order. By Orissa Act 10 of 1971, Sub-section (3) was added to Section 29 running to the following effect:

The sum determined under Sub-section (2) shall be final and shall be binding on the party making the offer by way of tender, bid or otherwise once such offer is accepted by the authority referred to in Clause (b) of that subsection.

Admittedly Petitioner''s bids were accepted by the prescribed authority and, therefore, finality attached to the sums determined. Mr. Mohanty for Petitioner claimed that the finality was In respect of the bidder and did not bind the State or the authorised officer and since Section 29(3} and Section 39 of the Act have to be read together, the finality in Sub-section (3) could not curtail the power of the Board of Revenue in the matter of exercise of jurisdiction u/s 39 of the Act. Section 39 provides:

The Board may, if it thinks fit, at any time during the period for which any licence has been granted order a reduction of the amount of fees payable in respect thereof during the unexpired portion of the grant.

Section 90 authorises the Board to make Rules. Sub-section (7) thereof prior to amendment by Orissa Act 17 of 1970 read thus:

for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted u/s 22 or any licence, permit or pass granted under this Act, or in respect of the storing of any intoxicant.

By the Amending Act of 1970, the words "any exclusive privilege granted u/s 22 or" have been omitted.

Undoubtedly u/s 39 prior to the amendments to the Act in 1970 and 1971, the Board of Revenue was exercising jurisdiction for reduction of fees payable in respect of grants of the type in question. Under the amended scheme, the sum of money u/s 29(1) of the Act for the grant of exclusive privilege u/s 22 thereof is to be determined either by auction or by calling tenders or otherwise as the State Government may direct and once such sum is determined following the provisions of Sub-section (2) of Section 29, finality attaches thereto. Section 39 of the Act cannot be interpreted in such a way so that the finality contemplated u/s 29(3) of the Act would stand abrogated. We do not appreciate the distinction drawn by Mr. Mohanty for Petitioner that while finality is for the purposes of the bidder, it is open to the State Government or the prescribed authority to alter the amount. At any rate, in view of the finality provided by statute, Petitioner''s right to move for a variation of the amount must be found to have been taken away. So far as he is concerned, once accepted, liability is final and IS not open to dispute. In view of Sub-section (3) of Section 29, Petitioner had no right to ask for modification of the sum and the Board of Revenue could not within the framework of the statute overlook the provisions of Sub-section (3) of Section 29 while exercising jurisdiction u/s 39 of the Act. That the matter of determination of fee for the exclusive privilege has been taken away from the hands of the Board is clear from the amendment made to Section 90(7) of the Act. Once Government is to determine the sum either by itself or through a prescribed agency, other than the Board of Revenue and finality in respect of the amount determined is statutorily attached, the Board, in our view, would have no jurisdiction left to exercise u/s 39 of the Act to scale down the sum. We have a feeling that appropriate amendments have not been made in Section 39 to make the provision into the changed scheme and that led the Board of Revenue to follow its practice of entertaining the matter notwithstanding the changes brought about by amendments.

4. From the above discussion it follows that the direction of the Board was without jurisdiction and in clear derogation of the bar u/s 29(3) of the Act. The Board of Revenue being a forum not authorised to pass order in the matter, the direction under Annexure-7 must be taken to be indeed of no consequence.

5. Mr. Mohanty for Petitioner claimed that a hearing should have been granted by the State Government before interfering with the statutory order. Undoubtedly

Petitioner as also the State were heard by the Member, Bard of Revenue, before he passed the order under Annexure-7. Ordinarily, the State would have been bound by the order of the Board, but for the position, the order itself is a nullity. In our view in fitness of things, a hearing should have been granted to Petitioner before the unilateral decision not to give effect to the order of the Board passed after hearing both sides was taken. While we accept the contention of Mr. Mohanty that a hearing should have been afforded, we see no force in the argument that the order should be set aside and the matter should be left to be heard because no useful purpose would ultimately be served as we have found that the Board has no jurisdiction to entertain such a claim. The writ application must accordingly fail. We, therefore, dismiss it. In the peculiar facts of the case, we direct parties to bear their own costs of the proceeding

B.K. Ray, J.

6. I agree.

