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(2006) 09 PAT CK 0026

In the Patna High Court

Case No : CWJC No. 3383 of 2006

Ram Krishna Kumar — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 38, 89

Citation : (2006) 4 PLJR 195

Hon'ble Judges : S.K. Katriar, J;Aftab Alam, J

Bench : Division Bench

Advocate : Tarakant Jha, Ranjeet Kumar in 3383, 3807, M/s Basant Kumar Choudhary and Rajiv Prashant in 6324, 6583, for the Appellant; A.G. Vikash Kumar for the State, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—In each of the four writ petitions, there is a single petitioner. The petitioners are wholesale dealers in Indian Made Foreign Liquor (I.M.F.L). Each of the four petitioners held wholesale dealers'' licences for I.M.F.L. for the year 2005-06. At the expiry of the license period, the respective District Magistrates granted extension to the petitioners'' licenses from 1.4.2006 to 31.5.2006, that is for a period of two months only. The petitioners then came to this Court making the grievance that contrary to the statutory provisions, their licenses were not renewed/extended for full one year but were extended only for two months. During the pendency of the cases, the petitioner''s licenses were extended from time to time and at present those licenses stand extended upto September 30, 2006. The petitioners seek a direction from the Court asking the respective District Magistrates and the other Excise authorities to renew/extend their licenses for full one year, i.e. upto 31.3.2007.

2. Earlier, a common written submission was filed on behalf of the petitioners The oral submission on their behalf was introduced by Mr. Tarakant Jha, Senior Advocate. After sometime, it was taken over by Mr. Basant Kumar Choudhary. It

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is creditable that in the facts and circumstances of the case, he was able to present a sustained argument of over an hour and a half. His arguments were based on the provisions of Sections 38 and 89 of the Bihar Excise Act and Rule 44 of the Bihar Excise Rules. In order to appreciate the submissions, it would be appropriate to take a look at those provisions.

3. Section 38 of the Act deals with fees, conditions and the form and duration of licences and it is as follows:-

38. Fees for terms, conditions, and form of, and duration of, licenses, permits and passes.-

(1) Every licence, permit or pass granted under this act-

(a) shall be granted-

(i) on payment of such fees (if any), and

(ii) subject to such restrictions and on such conditions, and

(b) shall be in such form and contain such particulars, as the Board may direct.

(2) Every licence, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government under sections 89, clause (e).

4. Section 89 delegates to the State Government the power to make rules. In exercise of that power, the State Government framed rules called the Bihar Excise Rules. Rule 44 deals with ''duration and number of licensee'' and provides as follows:-

44. Licences for the wholesale or retail vend of excisable articles may be granted for one year, from the 1st April, to the 31st March, subject to the following provisions:-

(1) Licences for the retail vend of country spirit, foreign liquor and spiced country spirit may be granted for any number of years up to three years, beginning on the 1st April, in cases where the Excise Commissioner considers this advisable.

(2) If any licence be granted during the course of the financial year, it shall be granted only up to the 31st March, next following.

(3) Season licences for the sale of either fresh or fermented TARI may be granted for periods fixed by the Collector.

(4) Temporary licences may be granted to provide for the supply of excisable articles on temporary and special occasions e.g., fairs, regimental camps of exercise, etc., and shall be limited to the period during which such temporary or special occasions last.

(5) Wholesale licences for the supply and sale of excisable articles may be granted for any numbers of years not exceeding five, as the Board may decide in

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each case.

5. Mr. Choudhary submitted that for licences other than a temporary licence governed by rule 44(4), the period fixed under the ruler was on a year-to-year basis. The main body of the rule stipulated that licence for the wholesale may be granted for one year and sub-rule 5 laid down that wholesale licences may be granted for any number of years not exceeding five. He further submitted that the period of the licences on yearly basis was quite rigid and inflexible. He submitted that the grant of licence on year-to-year basis was mandatory and it was, therefore, not open to the licencing authority to grant/ extend/renew the licence for a period of less than a year. He dwelt at length on the distinction between mandatory and directory provisions and argued that notwithstanding the use of the word ''may'', the rule insofar as it laid down the period for wholesale licences must be held to be mandatory. This was the main thrust of the argument of Mr. Choudhary. As supplemental to the main argument, Mr. Choudhary also relied upon the principle that when the statute laid down certain procedure to do something, the authority was obliged to do it exactly in the manner laid down in the statute. In support of his submissions, Mr. Choudhary relied upon a number of decisions. The list of the decisions relied upon by Mr. Choudhary is as follows:-

1. Mayor, & C, of Westminster vs. London and North Western Railway Company, 1905 AC 426 (page 428-430)

2. State of M.P. and Another Vs. Pradeep Kumar and Another,

3. Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others,

4. State (Delhi Admn.) Vs. I.K. Nangia and Another,

5. L. Hirday Narain Vs. Income Tax Officer, Bareilly,

6. State of Rajasthan Vs. Hari Shankar Rajendra Pal,

7. Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, .

8. State of Uttar Pradesh vs. Jogendra Singh, AIR 1963 SC 1613 (paragraph 8, page 1620).

6. I fail to see how the first decision (Mayor, & C. of Westminster) can be of any help to the petitioners. The decision laid down that the competent authority ''must use their statutory power bona fide and reasonably, and if they so act their decision as to the mode of acting cannot be interfered with''. In the rest of the decisions, different provisions of different Acts were held to be mandatory even though the plain language of the provisions might suggest otherwise. Those decisions are in relation to different Acts (other than the Excise Law) and were rendered in altogether different contexts. The decisions cited by Mr. Choudhary, to my mind, have no application to the facts of the case and in no way advance the case of the petitioners.

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7. The Court listened attentively while Mr. Choudhary argued for a long time. But once he sat down the spell was over and one could easily see that the claim of the petitioners was quite specious and without merit.

8. Refuting Mr. Choudhary''s submissions, Mr. Advocate General strongly argued that the petitioners had no case either on facts or in law. He submitted that the State Government reviewed the existing policy under which wholesale business in I.M.F.L. (sale-to-trade) was given to private traders and found that it was causing enormous loss of revenue to the State. Inherent in the system were pilferage, corruption and evasion of excise duty by different other means and as a result the excise revenue of the State was dismally low in comparison to the other States. With a view to augment the excise revenue, the State Government took the policy decision to take over the wholesale trade in I.M.F.L. from private hands and to give it to a Government owned company. He further informed the Court that a number of steps in that direction Were already taken. A Government company under the name and style of Bihar State Beverage Corporation was incorporated and registered under the Companies Act. It has been acquiring the wherewithal to take over wholesale trade in I.M.F.L. in the State and it was now in a position to do so. Mr. Advocate General told the Court that the Bihar State Beverage Corporation is likely to become operational and start business by the end of this month and then, the State Government will take away its exclusive privilege to deal in liquor from the private traders and shall give it to the Corporation.

9. Mr. Advocate General submitted that the review of the previous policy and the process to put another agency in place to take over the wholesale trade in liquor had started towards the end of the last financial year. Therefore, in order to ensure a smooth transition from the previous policy to the new one and to avoid any dislocation, the Commissioner-cum-Secretary in the Department of Excise, Government of Bihar issued a circular letter to all the Collectors under his memo No. 629, dated 22.2.2006 informing them about the intended change in the Government policy and directing them to keep the matter of renewal of the licences for the year 2006-07 in abeyance and to extend the licences granted for the previous year up to the period 31.5.2006 charging monthly fee only for two months, it was also directed that no order should be passed on any application for fresh licence(s) for the year 2006-07.

10. Mr. Advocate General submitted that the licences of the petitioners were initially extended up to 31.5.2006 and thereafter from time to time up to September 30, 2006 in the background of the aforesaid facts and circumstances.

11. He next submitted that the petitioner were only trying to grab as much as possible but were not telling the Court all the relevant facts and circumstances. He pointed out that normally there would be no occasion to extend a licence after its expiry on March 31. Under the law, licences for the next year (2006-07) could only be granted on the basis of a fresh auction/ tender. But since, the grant of licences for the year 2006-07 was kept in abeyance under the instructions of the

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Commissioner-cum-Secretary, Department of Excise, the petitioners'' licences were extended for the limited period without anything else. Thus, whatever the petitioners got was not on the basis of any competitive bidding. The petitioners were fully aware of the attending facts and circumstances and the limited period for which their licences were being extended and it was perfectly open to them to decline to take the licences unless it was for a period of full one year. They did not do so. They took the advantage of extension of licences for two months without any competition from outside and now they wanted the Court to grant them extension for a full year. The stand of the petitioners, seen in this light, would appear to be quite unreasonable and inequitable. In support of his submission, he relied upon paragraph 15 of the decision in Har Shankar and Ors. vs. The Deputy Excise and Taxation Commissioner and Ors. AIR 1975 Supreme Court 1121 which is as follows:

15. Learned Counsel for the respondents raised a preliminary objection to the maintainability of the writ petitions filed by the appellants and to the grant of reliefs claimed by them. He contends that such of the appellants who offered their bids in the auctions did so with a full knowledge of the terms and conditions attaching to the auctions and they cannot, by their writ petitions, be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids. This objection is well founded and must be accepted.

12. Coming to the legal aspect of the matter, Mr. Advocate General invited our attention to Section 22 of the Act that provides as follows:

22. Grant of exclusive privilege of manufacture and sale of country liquor for intoxicating drugs or denatured spirit or any other intoxicant.-(1) The State Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege-

(a)(i) x x x x

(ii) x x x x

(iii) of selling wholesale or retail, or

(iv) x x x x

(v) x x x x

(a) x x x x

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objection made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector or the Excise Commissioner.

13. Mr. Advocate General submitted that it is quite erroneous to contend that the

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provisions of rule 44 in so far as period of licence is concerned are mandatory. Learned Advocate General submitted that apart from the special facts and circumstances resulting from the change in Government policy, even under normal circumstances, it may be open to the licencing authority to grant licences for a period of less than one year. He pointed out that due to natural or man-made causes, the grant of licences may not take place on April 1 and may be delayed by a few months. Even in those cases, the licences would be granted only up to March 31 of the next year and thus, the period of the licences would be less than a year. In support of his submissions, Mr. Advocate General also relied upon two Supreme Court decisions; one in Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, and the other in Kuldeep Singh vs. Government of NCT of Delhi, AIR 2006 SCW 3627 (paragraph 15, page 3632).

14. On a careful consideration of the rival submissions and the materials on records, I find the submissions of Mr. Advocate General well founded and substantial. I am plainly of the view that the petitioners have no case either on facts or in law. I am unable to accept Mr. Choudhary''s submission that the provisions of rule 44 insofar as the grant of licences on year-to-year basis is concerned are mandatory and the licencing authority can not grant/extend/renew licences for a period of less than a year. Moreover, in the facts and circumstances of the case, the only reasonable course open to the licencing authority was to extend the petitioners'' licences for a limited period. The petitioners accepted the extension fully aware of this limitation and it is not open to them to challenge it and to ask for a mandamus from the Court for extension of their licences for full one year. I find no merit in these four writ petitions. These writ petitions are dismissed but with no order as to costs.

S.K. Katriar, J.

15. I agree.

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