(2018) 03 JH CK 0085

In the Jharkhand High Court

Case No : W.P.(C) No. 1390 of 2010

RAM KUMAR SINGH CHOUDHARY, S/O LATE TILAKDHARI SINGH CHOUDHARY AND OTHER — APPELLANT

Vs

STATE OF JHARKHAND AND OTHER — RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:
Jharkhand Excise Act, 1915 — Rule, 107, Section 8(3), 90

Citation : (2018) 03 JH CK 0085

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Prabhat Kr. Sinha, D.K. Dubey

Final Decision : Dismissed

Judgement

1. Heard Mr. Prabhat Kumar Sinha, counsel for the petitioners and Mr. D.K. Dubey, Senior S.C.I appearing for the respondent-State.

2. This writ petition has been filed for the following reliefs:

â?? the petitioners pray for quashing of Memo No. 2781 dated 23.10.2009 (Annexure-2) issued by respondent no. 5; whereby and whereunder each

of the petitioners are directed to deposit of Rs. 2 Lakhs as difference of license fee within a week during the currency of license period 2009-10 in the

Treasury, Dhanbad and also for quashing of Memo No. 3063 dated 13.11.2009 (Annexure-3) being the reminder for deposit of Rs. 2 Lakhs each;

Â and/or

For issuance of such other Writ(S)/ Rule(S)/ Direction(S)/ Order(S) as your Lordship may deem fit and proper under the facts and circumstances of

the instant case.â??

3. Counsel for the petitioners submits as under:

i) Petitioners have been running bar-cum-restaurant in the district of Dhanbad in the following names â?

I. Petitioner No.1- Ram Kumar Singh Choudhary licensee of Navneet Bar and Restaurant situated at Chirudih, Putki.

II. Petitioner No. 2- Subhash Singh licensee of Hindustan Bar and Restaurant situated at Mahuda More.

III. Petitioner No. 3- Chakra Dhari Mahto licensee of Tripti Bar and Restaurant situated at Mahuda More.

IV. Petitioner No. 4- Harjeet Singh licensee of Punjab Bar and Restaurant situated at Karkend. The aforesaid bars and restaurants are run under

licences issued by the respondents and renewed from time to time including for the period for the year 200910 as per provisions of Jharkhand Excise

Act, 1915 and the rules framed thereunder on payment of licence fee of Rs. 2 lakhs on 31.03.2009.

ii) The counsel for the petitioners submits that the license is required to be renewed every year after completion of necessary formalities and after the

satisfaction of the respondent authorities.

iii) However, the relevant Rule 107 was amended by the Member, Board of Revenue in exercise of its power u/s 90 of Jharkhand Excise Act, 1915

which was contained in Memo No. 1142(B) dated 31.07.2004 and the license fee for bars and restaurants situated on national highway was fixed at

Rs. 4 lakhs.

iv) Counsel for the petitioners submits that suddenly Memo No. 2781 dated 23.10.2009 was issued to the petitioners and the petitioners were directed

to deposit the differential amount of license fee of Rs. 2, 00.000/- calculating the license fee @ Rs. 4, 00,000/- This was raised on the basis of the fact

that the location of bars and restaurants of the petitioners is on National Highway.

v) It is further submitted that subsequently vide Memo No. 3063 dated 13.11.2009, the petitioners were reminded to deposit the difference of license

fee i.e. Rs.

2 Lakhs each within a period of one week.

vi) Pursuant to the aforesaid demand notices petitioner no.1 represented to the respondent no. 5 on 16.11.2009 requesting him to withdraw the demand notices and also praying therein to clarify as to whether the enhanced license fee will be applicable in the case of the petitioners for the future license

year.

vii) Counsel for the petitioners further submits that when the petitioner no. 1 did not receive any response to the representation from respondent no. 5,

all the petitioners jointly represented before the respondent no.3 on 03.02.2010 praying therein quash the demand notice dated 23.10.2009 by which

petitioners were directed to pay Rs. 2 lakhs each as difference of license fee. But the said representation of the petitioners did not bear any response.

viii) In the entire writ petition as well as in his argument, the counsel for the petitioners has not disputed the fact that the bars and restaurants of the

petitioners are located in National Highway.

ix) The contention of the petitioners is that the respondents have demanded the differential amount of license fee during the license period and the

petitioners have made specific statement at para 14 of the writ petition that the rate at which liquor has to be sold at the bar is being fixed by the

licensee who used to fix the same in such a manner that after sale of the liquor they can realize their investment in the form of license fees, excise

duty, sales tax and other expenses incurred by the licensee in running the Bar and Restaurant and also to earn some profit.

x) It is the specific case of the petitioners that as the major period of license had expired, the petitioners cannot realize the difference of license fee

from their customers and therefore, the demand of licence fee cannot be justified and the petitioners cannot be held to be liable on account of acts or

omissions of the respondents. xi) Counsel for the petitioners has referred to judgment passed in the case of Ram Kumar Singh Choudhary Vs. the

State of Jharkhand reported in 2005 (2) JCR 105 (Jhr) and has submitted that the notification dated

31.07.2004 was challenged before the Honâ??ble High Court wherein it was held by the Honâ??ble High Court at para 9 is as follows:

â??For the reasons aforesaid, the prayer of the petitioners for quashing the Notification No. 1142(B) dated 31.07.2004 can not be allowed. But we

hold that the enhancement of the licence fee, as sought by the said notification, will not be applicable in the cases of the petitioners licenses for which

renewal fee for the financial year 2004-05 has already been realized in advance in one lump sum prior to the issuance of the said notification and the

same cannot be enforced with retrospective effect and will be applicable only on the fresh settlement or renewal of the licenses, with prospective

effect.â??

Â xii) Counsel for the petitioners submits that demand of differential license fee was made after expiry of the period of license pursuant to notification

dated 31.07.2004, therefore, in view of the aforesaid judgment the differential amount of license could not have been demanded by the respondents.

4. Counsel for the respondents, on the other hand, submits as under:

i) The notification dated 31.07.2004 was issued wherein the classification was made in connection with the location of the bar-cum-restaurant and

special class was carved out in connection with the bar-cum-restaurant located on national highway. The bar-cum-restaurant of the petitioners are

admittedly located on the national highway. There was also another class of bar-cumrestaurants which are situated in the city of Ranchi, Jamshedpur,

Boakro, Dhanbad and Hazaribag.

ii) Vide notification dated 31.07.2004 the license fee was fixed @ Rs. 4,00,000/- for the class of bar-cumrestaurant situated in the national highway .

iii) Initially the respondents were not aware as to whether the location of the bar-cum-restaurant of the petitioners would fall on the national highway

or not.

iv) Thereafter Memo No. 2781 dated 23.10.2009 was issued to the petitioners and the petitioners were directed to deposit the differential amount of

license fee of Rs. 2, 00.000/-

v) Thereafter, the respondents in order to be confirmed conducted an inquiry regarding the location of bars and restaurants of the petitioners and

accordingly the respondents took up the matter with the authorities of National Highway and vide Letter No. 539 dated 15.06.2010 issued by the

Executive Engineer, National Highway Road Division, Dhanbad the respondents were confirmed that the location of the petitionersâ?? shop is on

national highway.

vi) Counsel for the respondents submits that there is no dispute that the location of the bars and restaurants of the petitioners is on the national

highway and this fact is very much within the knowledge of the petitioners and the petitioners were aware of the notification dated 31.07.2004 by

which license fee was fixed.

vii) So far as the statement in para 14 of the writ petition is concerned a counter-affidavit has been filed by the respondents wherein it has been

mentioned that the petitioners have availed the benefit of dense population of Chas Municipal township as well as benefits of site near National

Highway, but have paid the license fee fixed for rural areas. Therefore, the differential amount has to be paid by the petitioners.

5. After hearing the counsel for the respective parties and after going through the material on records, this Court is not inclined to grant any relief to

the writ petitioners in view of the following facts:

a) Admittedly, the bar-cum-restaurant of the petitioners are located on national highway.

b) It is neither the case of the petitioners nor could have been the case that the petitioners are not aware about the exact location of their bars and

restaurants.

c) It is also not in dispute that the petitioners are covered by the notification dated 31.07.2004 issued under Rule 107 of Jharkhand Excise Rule, 1915 .

d) The petitioners are bound by the letter and spirit of the amendment to Rule 107 of Jharkhand Excise Rule, 1915. Certainly, the petitioners are

covered by the terms and conditions of the license, but the notification issued by the State from time to time is also binding upon the petitioners and the

petitioners were fully aware that as per the notification dated 31.07.2004 the petitioners would be governed by clause 4 and the bars and restaurants

of the petitioners will be governed by the said clause as it were on the national highway.

e) It has been held by the Hon'ble Supreme Court in judgment reported in (1975) 2 SCC 633 that the license fee is the price of consideration or rental

which the government charges from the licensees for parting with its privilege in the trade of liquor. It has been held in para 20, 21 and 26 as follows:

â??Para 20 : The license fee stipulated to be paid by the appellants is the price of consideration or rental which the government charges from the

licensees for parting with its privilege in stipulated lump sum payment and is a normal incident of a trading or business transaction. This Court in the

recent decision in Nashirwar V. State of M.P. And the unreported decision dated

January 21, 1975 in Civil Appeal No. 365 of 1969 Har Shanker v.

Deputy Excise and Taxation Commissioner held that the State has exclusive right to manufacture and sell liquor and to sell the said right in order to

raise revenue. The nature of the trade is such auction or by private treaty. Rental is the consideration for the privilege granted by the Government for

manufacturing or vending liquor. Rental is neither a tax nor an excise duty. Rental is the consideration for the agreement for grant or privilege by the

Government.

Para 21 : The licenses in the present case are contracts between the parties. The licensees voluntarily accepted the contracts. They fully exploited to

their advantage the contracts to the exclusion of others. The High Court rightly said that it was not open to the appellants to resile from the contracts

on the ground that the terms of payment were onerous. The reasons given by the High Court were that the licensees accepted the license by

excluding their competitors and it would not be open to the licensees to challenge the terms either on the ground of inconvenient consequence of terms

or of harshness of terms.

Para 26 : The decisions of this Court Establish that the lump sum amount voluntarily agreed to by the appellants to pay to the State are not levies of

excise duty but are in the nature of lease money or rental or lump sum amount for the exclusive privilege of retail sales granted by the States to the

appellants.â??

f) The principle of Quid-pro-quo does not apply so far as the license fee is concerned. Persons dealing with liquor trade do not have fundamental right

to trade any liquor. It is the exclusive privilege of the State and licence fee is the rental price for parting with the exclusive privilege.

g) In such circumstances, the contention of the petitioners that the petitioners could fix the sale price of the liquor on the basis of the demanded license

fee and could have recovered it from the customers if the demand was issued prior to the licence period, is not acceptable and this contention is ,

hereby, rejected. This is more so in view of the fact that the license fee was revised vide a notification dated 31.07.2004 and was within the

knowledge of the petitioners.

h) The judgment passed by Honâ??ble Division Bench of this court reported in 2005 (2) JCR 105 (Jhr) has upheld the validity of the notification dated 31.07.2004 and has just granted relief from payment of the license fee for the period which was paid prior to 31.07.2004. The demand in the

instant case relates for the period after 31.07.2004 and accordingly the petitioners cannot have any relief on the basis of judgment reported in 2005 (2)

JCR 105 (Jhr).

6. Accordingly, the writ petition is dismissed.

7. Interim order, if any, stands vacated.

