
(2003) 03 PAT CK 0097
In the Patna High Court
Case No : C.W.J.C. No. 1986 of 2003

Ramkali Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Bihar and Orissa Excise Rules, 1919 — Rule 107

Citation : (2003) 2 PLJR 445

Hon'ble Judges : Nagendra Rai, J;Chandra Mohan Prasad, J

Bench : Division Bench

Advocate : Y.V. Giri, Jyoti Saran and Raju Giri, for the Appellant; R.K. Dutta, for the Respondent

Judgement

1. The Petitioner has filed the present writ application for a direction to the authorities to grant licence for Restaurant and Bar at village Kolhua (Dadar) Paigambarpur, Thana No. 482, District Miizaffarpur.

2. Admitted position is that the Petitioner is resident of the said village, which falls within the Kolhua (Dadar) Paigambarpur Grampanchayat. She applied for grant of licence for Restaurant and Bar at the said village before Respondent No. 3-the Excise Commissioner Department of Excise and Prohibition, Government of Bihar, Patna, who directed her to approach Respondent No. 4-the Collector, Muzaffarpur, who is competent to grant licence for Restaurant and Bar in Forms 9 and 10 of the Bihar Excise Act, 1915 (hereinafter referred to as "the Act"). Thereafter, it appears that the Petitioner filed an application before the Collector, Muzaffapur, and on an inspection having been made, it was found that the place, where the Restaurant and Bar is to be constructed, lies within the Grampanchayat Kolhua (Dadar) Paigambarpur and a recommendation to that effect was made. The Petitioner fulfilled other requirements and constructed a Restaurant and Bar at the place in question. However, licence is not being granted to her on the ground that though the said place lies in a rural area, but it is near he town of Mazaffarpur. The Petitioner is liable to pay licence fee at the

rate of Rs. 1,50,000/- per annum by treating the same as a part of the township. It is also an admitted position that the licence for the rural area is Rs. 60,000/- per annum.

3. Rule 107 of the Rules as framed under the Act provides for fees for all sales of India made Foreign Liquor under Hotel, Restaurant, Bar, Club and Canteen licences. Clause (iii) thereof provides that for towns having population over one lakh except those mentioned in Clauses (i) and (ii), the licence fee for Restaurant and Bar is Rs. 1.50,000/- only per annum and Clause (v) provides that for rural area the fee is Rs. 60,000/- only per annum.

4. The controversy in this case is as to whether the place where the Restaurant and Bar is to be opened is a rural area or it is a town area. From the report appended with the writ application, it is clear that the authorities have found that the place in question is a part of rural area and falls in the Gram Panchayat but only ground for demanding fee of Rs. 1,50,000/- per annum is that it is near the Muzaffarpur town.

5. In our view, the stand taken by the Respondent-authorities, including the Collector is wholly untenable. When admittedly the area is a part of the Grampanchayat it cannot be a part of the town at the same time. The fact that it is near the town of Muzaffarpur is no ground to treat the area in question as part of the town. Accordingly, the reason for demanding Rs. 1,50,000/- per annum as fee for grant of licence for Restaurant and Bar by treating the place in question as a part of the township by the authorities is wholly untenable and, accordingly, this writ application is allowed and a direction is issued to the authorities to treat the area as rural area and on deposit of Rs. 60,000/- as fee per annum, the licence is to be granted to the Petitioner unless there is any legal impediment. The decision is to be taken by the Collector within one month from the date of production of a copy of this order.

6. It is made clear that if the prayer of the Petitioner for grant of licence for Restaurant and Bar will be refused on any irrelevant ground, the Collector, Muzaffarpur, will be wholly responsible for the same and appropriate action will be taken against him after the matter is brought to the notice of this Court.