
(2015) 06 JH CK 0019
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5689 of 2013

Ravindra Sahi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 42
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 06 JH CK 0019

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

**Advocate : Anil Kumar, Senior Advocate and Abhishek Kumar, for the Appellant;
Lukesh Kumar, J.C. to G.A., Advocates for the Respondent**

Judgement

S. Chandrashekhar, J.—Challenging order dated 09.08.2013 passed by the Assistant Commissioner of Excise-Respondent No. 3 whereby, the licence granted to the petitioner in Form-9 and 10 has been cancelled, the present writ petition has been filed.

2. The petitioner is the proprietor of restaurant named as "180 Degree Bar and Restaurant" for which a licence under Section 22 of the Bihar Excise Act, 1915 was granted for the period 2011-12. The petitioner has paid licence fee of Rs. 10,00,000/- (ten lacs) for grant of the said licence and the said licence has been renewed from time to time.

3. Mr. Anil Kumar, the learned Senior counsel for the petitioner states that the petitioner has invested more than Rs. 80,00,000/- (eighty lacs) in the said Bar and Restaurant. Referring to order dated 09.08.2013, it is submitted that without issuing show-cause notice to the petitioner and without affording opportunity of hearing to him the licence granted to "180 Degree Bar and Restaurant" has been cancelled by the Assistant Commissioner of Excise, Ranchi which cannot sustain scrutiny in law. It is further submitted that the conditions for exercise of power under Section 42 of the Excise Act, 1915 is not satisfied in the present case and

therefore, order dated 09.08.2013 requires interference by this Court. The learned Senior counsel for the petitioner states that after the licence was cancelled, the petitioner has closed the bar in "180 Degree Bar and Restaurant". The learned Senior counsel relies on judgments in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, (2008) 216 CTR 303 : (2008) 226 ELT 22 : (2008) 300 ITR 403 : (2008) 6 JT 83 : (2008) 6 SCALE 733 : (2008) 14 SCC 151 : (2008) 169 TAXMAN 328 and State of Punjab and Others Vs. Mulkh Raj and Co. and Others, AIR 1977 SC 1550 : (1977) 3 SCC 582 : (1977) 9 UJ 135 .

4. Mr. Lukesh Kumar, the learned counsel appearing for the respondents submits that in view of 11 cases registered against the petitioner/employees of "180 Degree Bar and Restaurant", no interference is required in the matter. The licence granted to the petitioner, has been cancelled in public interest. Referring to paragraph No. 12 of the counter-affidavit filed on behalf of the respondent No. 5, the learned counsel for the respondents submits that out of 11 cases, one case being Lower Bazar P.S. Case No. 167 of 2013 has been lodged for the offence under Section 302/34 of the I.P.C. against the Security Guard of "180 Degree Bar and Restaurant".

5. From a perusal of impugned order dated 09.08.2013 and the counter-affidavits filed on behalf of the respondents, it appears that there is no dispute in so far as, non-compliance of rules of natural justice in not issuing show-cause notice to the petitioner prior to order dated 09.08.2013 was passed, is concerned. The petitioner has asserted that the licence for "180 Degree Bar and Restaurant" was initially granted to the petitioner in the year, 2011-12 on payment of Rs. 10,000,00/- (ten lacs). Cancellation of the said licence would definitely visit the petitioner with civil as well as evil consequences in as much as, the petitioner would suffer financial loss and a stigma would be attached to the Restaurant owned by the petitioner. In Canara Bank and Others Vs. Shri Debasis Das and Others, AIR 2003 SC 2041 : (2003) 3 JT 183 : (2003) 2 LLJ 531 : (2003) 3 SCALE 220 : (2003) 4 SCC 557 : (2003) SCC(L&S) 507 : (2003) 2 SCR 968 : (2003) 2 SLJ 345 : (2003) 2 UJ 1129 : (2003) AIRSCW 1561 : (2003) 2 Supreme 793 , the Hon"ble Supreme Court has observed thus,

"14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving

civil consequences is in issue. These principles are well settled..... ".

6. In the counter-affidavits, the respondents have taken a plea that in view of criminal cases registered against the petitioner and/or for the incidents which occurred at "180 Degree Bar and Restaurant", the decision to cancel the licence has been taken in public interest. It has also been asserted by the respondent-Assistant Commissioner of Excise-respondent No. 3 that grant of licence to the petitioner was under Section 22 of the Bihar Excise Act, 1915 which is a grant of exclusive privilege of the State.

7. The aforesaid plea taken by the respondents were never put to the petitioner and therefore, the petitioner had no occasion to reply to the same. The impugned order dated 09.08.2013 does not disclose any ground except that in view of incident dated 08.08.2013 the licence granted to the petitioner has been cancelled for maintaining law and order and in the public interest. The learned Senior counsel for the petitioner submits that had the plea raised by the respondents in the counter-affidavits been put to the petitioner, the petitioner would have replied to the same. Merely because the criminal cases have been registered, violation of conditions of licence cannot be inferred. Considering the aforesaid facts and circumstances, impugned order dated 09.08.2013 is quashed. A direction is issued to respondent No. 3 to issue show-cause to the petitioner within a period of two weeks. The petitioner shall be granted two weeks" time for filing reply to the same. Thereafter, a reasoned order would be passed by the Deputy Commissioner within next two weeks. However, it is made clear that till that time the petitioner shall not be permitted to continue.