
(2008) 03 PAT CK 0041
In the Patna High Court

Rawati International Pvt. Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0041

Final Decision : Dismissed

Judgement

1. Heard both the parties.

Intoxicants are exclusive privilege of the State. It is up the State to part with such privilege. In this state, the policy of the state is to part with such privilege with citizens. In order to guide parting of such privilege, the legislature of the State has made appropriate laws.

2. The state decided to grant to citizens special privilege to manufacture and sale in wholesale country liquor in the zones, amongst others, Muzaffarpur. It was decided that such grant would be made to a citizen, who would comply with the terms of the tender notice issued by the State. In the tender notice, amongst others, it was stipulated that whoever is interested to have such special privilege, he would be required to deposit a sum of Rs. 5 lakhs in order to be a part of the selection process. The tender notice further provided that upon such a citizen being selected, the deposit made by him would stand converted to security deposit, and he would be required to pay the minimum guaranteed amount quantified at Rs. 28.5 lakhs and odd, as the license fee for obtaining such privilege for the period of one year. The tender specified that on such conditions privilege would be granted for the period 1st June, 2005 to 31st March, 2008. The tender provided that the grantee of such privilege shall affect sale of manufactured Country liquor in bottles. It was made clear in the tender that the manufacturer must have bottling facility installed within a period of two months at the utmost from the date of grant, failing which, the same may enure to cancellation of the grant as well as forfeiture of the security deposit. Petitioner responded to the said tender successfully and was accorded the grant. Soon

thereafter, on 6th June, 2005, it was decided by the State that until 31st August, 2005 people, who had been accorded such privilege earlier would be permitted to deal with country liquor, in the manner, they were dealing with earlier, i.e. they will manufacture but sell country liquor in sachet, i.e. polythene pouches, but the new grantees, including the petitioner shall not be accorded the said facility. In other words, it was held out that the people, who had been authorized earlier to deal with country liquor prior to the grant made in favour of the petitioner and were entitle to manufacture country liquor for sale in polythene pouches shall be entitle to, on the terms and conditions contained in the said policy, to manufacture and sell country liquor for the period 6th June, 2005 until 31st August, 2005.

3. In terms of the grant, petitioner's earnest money was converted into security deposit and upon payment of the guarantee money proportionate to Rs. 28.5 lakhs and odd calculated for the period of 10 months from 1st June, 2005 to 31st March, 2006 petitioner became entitle to manufacture and sell country liquor, but he could not manufacture and sell country liquor on the basis of such grant from 1st June, 2005 to 31st August 2005 as by then he could not install bottling facility. Section 39 of the law made by the State legislature for parting with exclusive privilege of the State in intoxicants authorized the Board of Revenue to reduce license fee, payable by a grantee.

Petitioner approached the Board of Revenue seeking remission of fee i.e. proportionate amount of minimum guarantee, as had already been paid by him for the months of June, July and August 2005. That having been rejected, the petitioner is before us.

4. It is the contention of the petitioner that in view of the said policy of the State dated 6 June, 2005, the petitioner had been prevented from dealing with country liquor for the period 1st June, 2005, to 31st August, 2005, but for the said period the State earned revenue from the previous operators at the same rate. It was contended that the consideration for transfer of the privilege having been received by the State for those three months from the previous operator, there was no just reason for the State to insist upon the petitioner also to pay the same. In other words, it was contended by the petitioner that for one commodity i.e. the privilege to manufacture and sell country liquor at Muzaffarpur for the period 1st June, 2005 to 31st August, 2005, the State is seeking to recover the price thereof twice by insisting upon not to reduce the minimum guarantee paid in advance by the petitioner for the same period.

5. In this connection, the learned Counsel for the petitioner cited a judgment of a Division Bench of this Court in the case of Sheo Narain Jaiswal Pvt. Ltd. v. State of Bihar reported in 1997 BBC J 465, for the proposition that in matters pertaining to grant of special privilege, the State is required to be reasonable and act without arbitrariness. It was contended that in the matter of dealing with citizens, the procedure adopted by the State even in relation to intoxicants must be fair and not arbitrary. It was further contended that the mandate of fairness

contained in Article 14 of the Constitution of India squarely applies to matters pertaining to grant of special privilege in intoxicants. The learned Counsel also cited the judgment of the Hon''ble Supreme Court rendered in the case of State of Bihar and Ors. v. Sheo Narain Jaiswal reported in 1997 (2) PLJRS 158, whereby and whereunder Hon''ble Supreme Court upheld the judgment of the Division Bench of this Court referred to above.

6. In Sheo Narayan Jaiswal (supra), it was held out by the State openly that license fee shall be payable in equal proportion in one lump sum for a particular zone. More than one had been granted special privilege for that Zone. However, while license fee was claimed and charged, the State purported to recover license fee, as was indicated, from each of the grantees but not in equal proportion. This action on the part of the State was held to be unfair. The reason, therefore, is that the same was contrary to what had been held out by the State before the grantees were invited to participate in the process of selection.

7. An exclusive privilege authorizes the State to use the privilege or not to use the same. In other words, unless the State authorizes, no one else can be involved in manufacture, trade or commerce of the commodity, being the subject matter of such privilege. In the event, the State decides not to use such privilege or to use the same exclusively, no citizen has any right to question such stand on the part of the State. However, the moment, the State decides that it would share such privilege with citizens, in the matter of dealing with the citizens, no doubt the State is required not only to be fair, but also to ensure that there is no arbitrariness in any of its actions, inasmuch every action on the part of the State is circumscribed by the mandates contained in Chapter III of the Constitution.

8. The learned Counsel for the petitioner next cited a judgment of the Hon''ble Supreme Court rendered in the case of Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, , for the proposition that the law does not authorize the State to hold out to a citizen to take or leave a privilege pertaining to intoxicants. In that case, the State of Kerala banned sale of country liquor. It thereupon rehabilitated the workers, who were engaged in manufacture, sale and distribution of the country liquor. Subsequently, it lifted the ban and proposed to grant permission to citizens to manufacture, sell and distribute country liquor. While doing so, in the rules, it provided that each person, who shall be accorded the right to manufacture, sell and distribute country liquor, would be required to engage one rehabilitate worker. This action was challenged. The Court held that in the matter of carrying out business one has a right to chose the person to be engaged therefore and the same cannot be imposed even when according a grant to a person to manufacture, sell and distribute country liquor. In the instant case, there is no imposition by the State as such. In the instant case, we are only concerned with regard to refund of advance minimum guarantee paid by the petitioner for the months of June, July and August, 2005. The contention is that in view of the policy of the Government dated 6th June, 2005, petitioner could not manufacture and sell country liquor for the months of June, July and

August, 2005. That appears to be the basic contention to support the claim for refund of the advance minimum guarantee paid by the petitioner for the said three months. The said contention has been supported by the term of the tender to the effect that the grantee of the exclusive privilege would get two months time to install bottling facility. It is the contention of the petitioner that before settlement, the State was aware of the fact that for two months it may not be possible for the grantee to manufacture and sell country liquor. In those circumstances, it was contended that it was unjust and improper on the part of the Board of Revenue not to allow the claim of the petitioner for refund of minimum guarantee amount paid by the petitioner for the months of June, July and August, 2005.

9. The fact remains that the petitioner did not challenge the 2006 policy contending that by reason of the said policy, the petitioner has been prevented from manufacturing and selling country liquor. In any event, the said policy did not debar the petitioner in any manner whatsoever from manufacturing and selling country liquor on the basis of the grant as was made in his favour. By reason of the grant, petitioner could start manufacturing and selling of country liquor from 1st June, 2003. The only restriction was that he was to sell country liquor in bottles. The tender did not contemplate that the grantee will not be able to manufacture and sell country liquor for a period of two months. Instead the tender notice made it clear that the grantee is required to have bottling facility and if he does not have the same, he can at the most have two months time to install the same. The policy dated 6 June, 2005 while did not authorize new grantees to sell in polythene pouches, it permitted previous operators to do so for a period of three months. As aforesaid, the policy of 2006 was not challenged by the writ petition, nor it is the contention of the petitioner that by reason of the said policy, the market of the petitioner had been crowded by previous operators. Petitioner accepts that for he had no bottling facility, he could neither manufacture, nor sell country liquor for those three months. It is a failure on the part of the petitioner and he has not been made to fail by the policy of the Government dated 6th June, 2005.

10. The learned Counsel for the petitioner contends that when the petitioner had two months time to have the bottling facility installed in terms of the tender notice itself, the petitioner should be entitle to refund for two months i.e. for the months of June and July, 2005 at least. As aforesaid, the tender did not postpone the grant until after expiry of two months from 1st June, 2005. It made the grant operative from 1st June, 2005. The petitioner, if had installed a bottling plant on or before 1st June, 2005, could start obtaining the benefits of the grant from 1st June, 2005. The tender notice only put to notice of the petitioner that in the event, he is unable to install the bottling facility within a period of two months from 1st June, 2005 that may enure to cancellation of his license coupled with forfeiture of his security. Limiting the time for having the bottling facility was not postponement of the grant. Had it been so, the matter would have been different. In those circumstances, we have no reason to interfere with the order

of the Board of Revenue impugned in this writ petition. The writ petition fails and the same is dismissed. This disposes of the writ petition.