

(2005) 08 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 8891 of 2005

Shiv Kumar Bhagat

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Citation : (2005) 08 PAT CK 0033

Final Decision : Allowed

Judgement

Shashank Kumar Singh and Chandramauli Kr. Prasad, JJ.—In this writ application filed under Article 226 of the Constitution of India, prayer made by the petitioner is to quash the order dated 12.7.2005 (Annexure-8) whereby the prayer made by the petitioner for renewal of the licence has been rejected.

2. Shorn of unnecessary details, facts giving rise to the present application are that the Excise Commissioner, Bihar, Patna by order dated 18.3.2002 granted approval for grant of one additional wholesale licence to vend India made foreign liquor, hereinafter referred to "IMFL" for the district of Begusarai. One Prem Lal Gupta challenged the same by filing a writ application before this Court. During the pendency of the said writ application, petitioner was granted the licence. The Division Bench of this Court in the case of Premlata Gupta Vs. State of Bihar and Others, allowed the writ application and quashed the grant of additional licence to vend IMFL at Begusarai. As regards the validity of the grant of licence to the petitioner, this Court observed as follows :

24.-xxx As we are not approving the recommendations dated 13.2.2002 and are wishing to quash the orders passed by the commissioner, Excise and the Board of Revenue, it is not necessary for us to look into the manner in which the licence was granted by the Collector in favour of the respondent No. 6. However, we would observe that a swift action always is not a bad action. The Collector acted swiftly but that does not mean that he was acting with ulterior motives, mala fide or under the dictates of the respondent No. 6.

3. Aggrieved by the same, petitioner preferred appeal before the Supreme Court. The Supreme Court upheld the validity of the order sanctioning the grant of additional licence to vend IMFL in the case of Shiv Kumar Bhagat Vs. State of Bihar and Others, and set aside the order of this Court. As regards the validity period of the licence granted to the petitioner it observed as follows :

22. The counsel for Respondent 5 then submitted that the matter has become infructuous since the licence granted to the appellant was only valid till 31.3.2003. The period of the licence having run out, there was nothing left to be decided in this appeal, which also has become infructuous. This submission is also misconceived. So far as the grant of wholesale licence to vend IMFL is concerned, under the Rules the same may be granted for any number of years not exceeding five years, as the Board may decide in each case. It is not as if each year a fresh notice is issued for the grant of wholesale licence. In fact, respondent 5, as admitted by her, holds a wholesale licence since the year 1984, and the same is being renewed from time to time. In these circumstances, there is no justification for the argument that the period for for which the licence was issued to the appellant has run out and the appeal has become infructuous.

4. Said appeal was disposed of by the Supreme Court on 8th of September, 2003. Petitioner, thereafter, filed application for renewal of the licence on 13.10.2003. After the lapse of more than a year, the Collector issued notice dated 3.12.2004 (Annexure-4) asking the petitioner to show cause as to why; renewal be not refused.

5. Petitioner submitted his reply and on consideration of the same, the Collector by order dated 3.3.2005 (Annexure-5), declined to renew the licence. Renewal was refused on three fold grounds, i.e.-

- (i) The petitioner is an accused in a criminal case.
- (ii) The petitioner brought undue pressure from out-side on the licensing authority to renew licence, and
- (iii) Grant of licence earlier to the petitioner, was in violation of the Circular of the Board.

The petitioner challenged the said order before this Court, which was numbered as CWJC No. 3479 of 2005 (Shiv Kumar Bhagat v. The State of Bihar and Ors.). This Court found the first two grounds to be illegal. So far the third ground is concerned, this Court observed as follows :

xxx So far third ground that earlier settlement itself was not valid, cannot be taken as a ground in view of the earlier judgments at this stage when the same was not challenged earlier. However, we are not inclined to express any opinion on the same as the matter has to go before the Collector for fresh consideration with regard to question of renewal of the licence where the intervenor can raise his grievances.

6. The Collector, in pursuance of the aforesaid order, considered the prayer of the petitioner for renewal of the licence and finding that the petitioner was given licence in the year 2002-2003, without following the prescribed procedures, by the impugned order declined to renew the licence.

7. In the present application, one Balmukund Singh had filed application for intervention. He was heard by this Court, while setting aside the earlier order of the Collector refusing to renew the licence. In our opinion he has interest in the lis and accordingly his application for intervention is allowed.

8. Mr. Satyabir Bharti, learned Counsel appearing on behalf of the petitioner, raises a very short point. He submits that the Collector had declined to renew the licence only on the ground that the licence granted to the petitioner in the year 2002-2003 is illegal and not in accordance with law. He submits that the Collector cannot go into this question at the time when he, is exercising the power of renewal.

9. Mr. R.K. Datta, S.C. IV, however appearing on behalf of the State, submits that licensee has no right of renewal of the licence and renewal cannot be claimed as a matter of right. As such no fault can be found out in the impugned order. In this connection, Mr. Datta has drawn our attention to Section 45 of the Bihar Excise Act, which reads as follows :

45. Bar of right to renewal and to compensation. No person to whom any licence has been granted under this Act shall have any claim to the renewal of such licence or, save as provided in Section 43, any claim to compensation on the determination thereof.

10. Mr. Jitendra Singh, appearing on behalf of the intervenor, submits that the petitioner had not paid the renewal fee and also not filed application for renewal of the licence within time and as such, the Collector did not err in rejecting the prayer of the petitioner for renewal of the licence.

11. Having appreciated the rival submission, we do not have the slightest hesitation in accepting the broad submission of Mr. Datta that the licensee has no absolute right of renewal of the licence and that can be refused on the ground germane for decision on such issue. But at the same time it cannot be said that the renewal of licence can depend upon the whims and caprice of the authority. Here, in the present case, the prayer for renewal has been rejected only on the ground that the licence granted to the petitioner in the earlier year, was not valid. It is not in dispute that during the existence of that licence, nobody had challenged its validity. Mr. Datta does not seem to be right when he contends that there was no occasion to challenge the same. Licence was granted to the petitioner during the pendency of the writ application and nothing prevented the aggrieved person to challenge the same. The Supreme Court in the case of the petitioner i.e. Shiv Kumar Bhagat (supra) has observed that "there is no justification for the argument that the period for which licence was issued had ran out."

12. In any view of the matter if challenge is not made to the grant of licence for whatever reason, same shall not mean that the licence granted to the petitioner has become illegal and the licensing authority while considering the question of renewal can go into this question. We are of the opinion that the facts occurring subsequent to the grant of the licence and before the renewal, shall only be relevant for deciding the question of renewal and the authority while considering the question of renewal cannot go into the validity of the grant itself.

13. As stated earlier, the intervenor had pointed out that the application filed by the petitioner for renewal was not accompanied with the renewal fee and that was not filed within the stipulated time, which fact has been disputed by the petitioner.

14. It is well settled that the order passed by the statutory authority has to be judged on the basis of the reasons stated in the order and its validity cannot be judged on the basis of reasons placed on record by way of any affidavit. Reference in this connection can be made to a decision of the Supreme Court in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. AIR 1978 SC in which it has been held as follows :

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

15. The Collector has not declined to renew the licence on this ground, hence same is not fit to be considered to judge the validity of the order.

16. We make it clear that we have not expressed our opinion on this issue and that shall be decided by the Collector in accordance with law, while considering the prayer of renewal.

17. For the reasons aforesaid, we are of the opinion that the order passed by the Collector, refusing to renew the licence is illegal and accordingly, we set aside the same and remit the matter back to him for reconsideration of the prayer of the petitioner, bearing in mind the observation aforesaid. As the matter is hanging

fire since long, we direct the Collector to take decision within two months from the date of receipt/production of a copy of this order.

18. In the result, this writ application is allowed, the impugned order dated 12.7.2005 (Annexure-8) is set aside with the direction aforesaid. In the facts and circumstances of the case, there shall be no order as to cost.