

(2004) 01 PAT CK 0117
In the Patna High Court
Case No : L.P.A. No. 89 of 1993

S.K.G. Sugar Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22

Citation : (2004) 2 PLJR 642

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : G.P. Bimal and Satyabir Bharti, for the Appellant; Ashok Kumar Mishra No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai and R.S. Garg, JJ.—Heard learned Counsel for the parties.

2. This appeal is directed against the judgment dated 16.7.1998 passed by a learned Single Judge dismissing the writ application (C.W.J.C. No. 2982 of 1983) filed by the writ Petitioner Appellant challenging the penalty imposed for default in supply of country liquor during the month of February, 1978.

3. Admitted fact is that a tender notice was issued incorporating the terms and conditions as mentioned in clauses 7 and 7A of the licence in Form No. 27 issued u/s 22 of the Bihar Excise Act. The Appellant applied for grant of exclusive privilege and was granted exclusive privilege for other places but not granted for the Rohtas district as that was granted to one Sheo Narayan Jaiswal who later on failed to supply the country spirit. Thereafter, the Commissioner ordered the Appellant to supply country spirit for the said district on the same terms and conditions as mentioned in the tender notice and as incorporated in Clauses 7 and 7A of the licence. Clauses 7 and 7A of the licence run as follows:

7. The licensee shall be bound to supply to licensed vendors by way of sale, at any warehouse at which the sale of spirit under the licence is for the time being

permitted, spirit of the quantity or quantities and description or descriptions mentioned in the passes produced by them.

7A. Failure to supply spirit as specified in condition 7 supra shall entail penalty at the discretion of the Commissioner of Excise. The penalty may extend to the amount of duty on the spirit demanded by the licensed vendors but not supplied together with compensation for any loss that may fall on Government in consequence of this failure to supply spirit.

4. The Appellant defaulted in making supply of country liquor and, thereafter, steps were taken in terms of the aforesaid clauses and the penalty has been imposed, which has been upheld by the Board of Revenue.

5. Learned Counsel for the Appellant. reiterated the same very points, which were urged before the learned Single Judge that in absence of any licence having been granted for supply of country liquor for the Rohtas district also, the aforesaid clauses cannot be resorted to.

6. We fully agree with the view taken by the learned Single Judge that once the Commissioner has ordered for supply of country liquor to the retailers in the district of Rohtas on the same terms and conditions as incorporated in the tender notice, now the Appellant cannot take a too technical plea to shirk away from the liability to pay the penalty for short supply. Accordingly, the said point advanced on behalf of the Appellant is devoid of any substance. Other point urged on behalf of the Appellant that the aforesaid two clauses will not be applicable to his case, has also been rejected by the learned Single Judge as those clauses were the terms of the tender notice, in accordance with which the Appellant had earlier applied for grant of exclusive privilege for Rohtas also and subsequently as stated above the Commissioner ordered for supply of country spirit on the same terms and conditions and as such the said clauses are fully applicable to the case of the Appellant.

7. In the result, there is no merit in this appeal and, accordingly, it is dismissed, It is made clear that if the cost of price of the supplied country spirit is still due to the Appellant from the department and a prayer to that effect is made by the Appellant, then the authority will consider and take decision in accordance with law within three months from the filing of the such petition.