
(2006) 09 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 536 of 2006

Smt. Ramkali Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Citation : (2006) 09 PAT CK 0057

Final Decision : Dismissed

Judgement

1. Heard Mr. Y.V. Giri, Senior Advocate appearing for the petitioners and Mr. Purnendu Singh, J.C. To A.G. representing the State.

2. The petitioners in this case held licences for bars-situate out-side the limits of any municipal corporations. They seek to challenge a notification, dated 8.8.2005 by which the Board of Revenue in exercise of powers u/s 90 of the Bihar Excise Act, amended Rule 107 of the Bihar Excise Rules fixing fees of licences for sale of IMFL by hotels, restaurants, bars, clubs, canteens etc. The petitioners try to assail the amended Rule 107 in so far as it does away with the rural category that was there under the previous rule and fixes the annual fee for the licence at the flat rate of Rs. 3 lakhs for all hotels, restaurants, bars etc. not being a 3 star, 4 star or 5 star hotel and situate at any place out-side the Corporation limits. Under the previous rule apart from Star-hotels or restaurants, bars etc. at places like Patna, Ranchi, Jamshedpur, Dhanbad and Bokaro there was an specific category under Clause 5, described as, "for rural areas" and the annual licence fee for restaurants, bars etc. in a rural area was Rs. 60,000/-.

3. Mr. Giri submitted that the doing away with the rural category by putting together all places outside municipal limits, coupled with five-fold increase in the annual licence fee was highly arbitrary, unreasonable and violative of Article 14 of the Constitution.

4. Learned Counsel submitted he was not unconscious that the matter was governed by the law of Excise under which trading in intoxicants was held to be

the exclusive privilege of the State. But in the event, the State parted with its privilege on payment of certain fee, it should be held obliged to atleast maintain a modicum of reasonableness and to follow the principles of equality guaranteed under Article 14 of the Constitution.

5. Mr. Giri argued at length elaborating different aspects of his submissions. Learned Counsel contended that by putting all places beyond the municipal limits in one basket, in effect the Government abolished all classification. He criticized the amended Rule 107 as based, on no classification and treating as equals areas and regions that were patently unequal. He further submitted that even if it is held that the amended Rule 107 contained some rudiment of classification, it was bad and violative of Article 14 as it was based on no reasonable differentia, In support of his submissions Mr. Giri relied upon a Supreme court decision in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, and submitted that in that case, it was held that taxing statutes were not wholly immune from attack for violation of Article 14 of the Constitution. He also relied upon a recent decision of the Supreme Court in *Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others*, . Referring to paras 17, 58 and 59 of the decision, Mr. Giri submitted that the Supreme court was insisting on observance of Article 14 even in cases of excise. The decision in *Kerala Samausthana Chethu Thozhilala Union* (supra) was on entirely different facts and in an altogether different context and in our view that decision has no application to the case in hand.

6. Mr. Giri also relied upon another decision of the Supreme Court in *The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc.*, . In that decision the Supreme Court examined an Act levying tax on buildings all over the State of Kerala only on the basis of the total floor-area and regardless of the situs, purpose or user etc. of the building. The Supreme Court struck down the Act. holding that under Schedule VII, List II, Entry 49 the State legislature had indeed the power to make law for levying taxes on lands and buildings but that power could not be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution.

7. Though matters of taxation of lands and houses or of municipal taxes have no direct application to the issue in hand, reliance placed by Mr. Giri on *Haji K. Kutty* recalls to mind a later decision of the Supreme court in a case that went from this Court. In *Sachchidanand Kishoro Prasad Sinha and Another Vs. State of Bihar and Others* , this Court set aside a notification issued by the municipal corporation laying down rates of holding tax on the ground that it was based on grossly inadequate classification and resulted in treating unequals as equals. In appeal the Supreme court in *State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others*, reversed the decision of this Court disagreeing with the reasons assigned by it. The observations in paragraphs 16 & 17 of the judgment though made in the context of municipal taxes may be used with greater force to repel Mr. Giri's submission that abolition of the rural category

offends reasonable classification and the rule should, therefore, be held to be violative of Article 14.

8. We are further of the view that it is incorrect to say that the amended Rule 107 has no classification. The amended rule lays down a graded fee structure for 3 Star, 4 Star and 5 Star hotels @ Rs. 6 lakhs, Rs. 5 lakhs and Rs. 4 lakhs respectively. The licence fee for hotels, restaurants, bars in Patna and Muzaffarpur municipal areas is fixed at Rs. 5 lakhs and in other municipal areas at Rs. 4 lakhs per annum. For places other than those indicated above, licence fee is at the flat rate of Rs. 3 lakhs per annum.

9. Coming now to Mr. Giri's second submission, Learned Counsel submitted that a bar in the rural area that under the previous rule was required to pay for its licence Rs. 60,000/- annually, would be now obliged to pay 5-times more, that is, Rs. 3,00,000/-. He objected to such a steep rise in the licence fee. In the first place, the amended rule can not be declared bad simply on the ground of sudden high rise in the rate of licence fees. Secondly, the high rate of licence fee for areas outside Patna and Muzaffarpur municipal limits can be explained in two ways. One is that the Government policy is to discourage the setting up of bars in rural areas of the State where hitherto the degree of addiction to the vice is much lower than in urban areas. For the other, we must take a pragmatic view of the matter. Bars and restaurants serving liquor are not set up in the rural interior of Bihar and the interests of the petitioners are hurt who had their bars at places of considerable commercial value and yet falling outside any municipal areas and, thus, qualifying for the lower fee for rural areas under the previous Rules. It is a common sight and the Court can take judicial notice of the fact that what are being described as bars in rural area are, as a matter of fact, restaurants/bars serving liquor at highways where there is a high vehicular traffic or on road-points leading to Nepal where again there is a high traffic, of tourists both indigenous and foreign or, in some cases, bars or restaurants established just a few hundred meters or a few kilometers outside the municipal limit where the lovers of Bacchus, can reach without difficulty and the proprietor may have the additional advantage of getting the licence on a much lower fee on the plea that the bar/restaurant was situate in a rural area.

10. The amendment under challenge doing away with the rural category appears to be aimed at plugging that loop-hole and preventing the anomaly resulting from the previous classification. We are supported in our view by a communication, dated 6.7.2002 from the Collector, Muzaffarpur to the Excise Commissioner, Bihar, Patna a copy of which is at Annexure-11). In his letter, the Collector, Muzaffarpur appears to be protesting against the grant of licence for a bar merely for Rs. 60,000/- just outside the municipal limits of Muzaffarpur pointing out that it would have an adverse effect on collection of excise revenue from bars and restaurants situate in Muzaffarpur town for which the proprietors had obtained licences on a much higher fee.

11. For the reasons discussed above, we find no merit in this writ petition. It is

dismissed.