(2003) 09 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2379 of 2003

Spicy Beverages Pvt. Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 22, 22D
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 442

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Sudhir Singh, Satyabir Bhanti and S.N. Prasad, for the Appellant; Ram Awadh Gupta, S.G.P. and P.S. Dayal, for the State and P.K. Shahi, for the respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner against the order dated 12th April, 2003 passed by the Member, Board of Revenue, Jharkhand, Ranchi in Case No. 16/2003, whereby and whereunder, the application of petitioner for grant of exclusive privilege/licence for manufacture and wholesale supply of spiced country liquor in the State of Jharkhand has been rejected.

2. The case of the petitioner is that the petitioner is a Company incorporated under the Companies Act, 1956 having its registered office at Gandhi Road, Dhanbad in the State of Jharkhand. The Member, Board of Revenue, Jharkhand issued a Gazette Notification on 30th January, 2002 publishing Notice Inviting Tender (N.I.T. for short) dated 29th January, 2002 for grant of exclusive privilege for manufacture and whole sale supply of spiced country liquor in the State of Jharkhand for the period from 1st April, 2002 to 31st March, 2005, dividing the area of supply into five zones, each zone consisting of several districts. The petitioner also applied for grant of exclusive privilege for manufacture and whole

sale supply of spiced country liquor for the entire Jharkhand State i.e. for five zones.

3. Further case of the petitioner is that the State Government vide Notification No. 470, dated 15th January, 1919 delegated the power u/s 22 of the Bihar (now adopted as Jharkhand) Excise Act, 1915 (for short Excise Act) to the Member, Board of Revenue to grant exclusive privilege for manufacture and whole sale supply of country spiced liquor. The State has not delegated any power for grant of special privilege u/s 22-D of the Excise Act to the Member, Board of Revenue.

4. In the N.I.T., certain conditions were laid down by the respondents such as :

(i) the applicant can be distiller or non-distiller of the State of Jharkhand or a distiller of any other State;

(ii) every applicant should deposit Rs. 1.5 lacs as security money along with the tender papers;

(iii) every applicant to submit Project Report showing price on which the applicant is willing to supply spiced country inquor;

(iv) details about the procurement of plant and machinery and other equipments for manufacture and whole sale supply;

(v) details for procurement of necessary fund; and

(vi) the following documents :

(a) income tax clearance certificate;

(b) sales tax clearance certificate from the place where it is gestered as a Dealer;

(c) character certificate from the concerned District Magistrate certifying the permanent place of residence or the regular place of business. But if it is a Company, such certificate is not required, rather it has to produce a certificate from the Company Secretary to the effect that it is not under liquidation;

(d) the list of all the Partner/Directors along with their full address, registration certificate under Memorandum of Article of Association.

6. According to the petitioner, it fulfils all the conditions as per N.I.T. It s a ''Non-distiller'' Company of the State of Jharkhand having its Office at Gandhi Road, Dhanbad; it has submitted a detailed Project Report as per N.I.T. and also submitted a Certificate from Punjab National Bank, K.F. Road, Gandhi Nagar, Patna stating that the petitioner-company is capable to under-take any business for Rs. 35 lacs and has withdrawal facility of Rs. 35 lacs from the Bank and a separate certificate from the Bank that the working capital capacity of Rs. 50 lacs shall be financed to the petitioner-company by the Bank on merit of proposal.

7. The petitioner further claims that it fulfills all the conditions laid down under Clause (11) of the N.I.T. it having submitted :

(a) income tax clearance certificate;

(b) solvency certificate from Punjab National Bank, Patna that it is capable to undertake any business upto Rs. 35 lacs;

(c) sales tax no objection certificate from the Deputy Commissioner, Commercial Taxes, Dhanbad that the petitigner is not a registered dealer.

8. The counsel for the petitioner submitted that the petitioner was. In fact, not liable to submit any certificate that it is a sales tax payee, having not registered by the date if was to be submitted, by way of abundant precaution, a Sales Tax Certificate was submitted by it making it clear that the petitioner is not a registered dealer.

9. It was submitted by the counsel for the petitioner that the documents submitted by the petitioner being valid. The petitioner was called for negotiation by the Member, Board of Revenue by letter No. 392 dated 2nd April 2002. The authorised representative of petitioner-Company participated in the negotiation for settlement of exclusive privilege for manufacture and whole sale supply of country liquor, but to the utter surprise and shock, the petitioner-Company was refused the grant of exclusive privilege for manufacture and whole sale supply of spiced country liquor. It has been granted in favour of the 5th respondent, namely, Manish Jaiswal.

10. It appears that the petitioner earlier moved before this Court in WP (C) No. 2990 of 2002 for grant of exclusive privilege for manufacture and whole sale supply of country liquor. The case was remitted by this Court on 27th April, 2002 to the Member, Board of Revenue, Jharkhand to consider its claim for grant of exclusive privilege for manufacture and who sale supply of spiced country liquor, wherein after, on hearing the parties, the impugned order has been passed on 12th April, 2003.

11. The counsel for the petitioner submitted that non est grounds have been shown to reject the claim of the petitioner, though the petitioner fulfils all the requisite conditions, as referred above. The Member, Board of Revenue mainly rejected the claim on the ground that the address of the Company is not shown in the Memorandum of Association, though it is not required u/s 13 of the Companies Act, 1956.

He relied on the Form No. 18 issued pursuant to Section 146 of the Companies Act, 1956 showing notice of situation/change of registered office, wherein Gandhi Nagar, Dhanbad has been shown as the address and registered office of the petitioner-Company (Annexure-9 at page 121 of the writ petition)

12. The N.I.T. was Gazetted on 13th February, 2002 and tenders were to the submitted by 3.30 p.m. of 25th February, 2002. During this period, the petitioner''s Company got it registered under the Companies Act, 1955 on 11th February, 2002.

Technically the petitioner-Company having come into existence before 25th February, 2002, was entitled to apply, subject to fulfillment of all the conditions mentioned in the N.I.T.

13. In the present case, the authority was to exercise power u/s 22 of the Excise Act, 1915 to grant exclusive privilege for manufacture and wholesale supply of spiced country liquor, the provision of Section. 22-D of the said Act is not applicable.

14. The stand taken by petitioner that the Member, Board of Revenue has not been delegated with power u/s 22-D of the Excise Act cannot be accepted in view of recent decision of this Court in the case of Nand Kishore Jaiswal, WP (C) 2251/2002 See 2003 (2) JCJR 338 (Jhr) and analogous cases, disposed of on 20th August, 2003, wherein the Court upheld the jurisdiction of Board of Revenue to grant privilege u/s 22-D of the Bihar Excise Act. 1915.

15. There is no dispute that the stringent condition of submission of documents, information, etc. are mandatory. The only question arises whether the petitioner fulfils all the conditions or not.

16. Admittedly, the petitioner is a non-distiller, therefore, it was to be ascertained whether it is a non-distiller Company of the State of Jharkhand or not. To find out the fact, it was necessary for petitioner to give its address.

None of the documents show the exact address of the petitioner except the Form 18 (Annexure-9 to the writ petition at page 121), as discussed above. But Form B having issued by the authorities on 12th September, 2002, much later than the last date of submission of the tender, it cannot be presumed that the petitioner enclosed the Form 18 and submitted before the authorities in supported of its address.

The provision of submission of Sales Tax Clearance Certificate cannot be made applicable for a Company not registered under the Sales Tax Act. In this background, a similar provision was struck down by a Division Bench of this Court by its judgment dated 8th May, 2001 passed in CWJC No. 1800 of 2001 : Rama Expoinvest Pvt. Ltd. v State of Jharkhand 2001 (2) JCR 133 (Jhr). Therefore, non-submission of a Sales Tax Clearance Certificate by petitioner, an unregistered Company will not make it ineligible.

17. Admittedly, the petitioner was liable to submit a certificate from a Bank that the Company is capable to undertake business for Rs. 35 lacs. Though it submitted a letter of assurance of finance Rs. 50 lacs from the Punjab National Bank, Gandhi Nagar, Patna, but it was conditional, cannot be accepted. The Bank agreed to finance the petitioner on merit of proposal meaning thereby, it was for the Bank to determine whether they will finance or not, depending on ''merit of proposal'', as may be submitted by petitioner. The Bank may finance or refuse it. Therefore, the conditional assurance cannot be termed to be a Certificate as per Clause 3 (KHA) of N.I.T in question.

Similarly, as per Clause 11 (GA) of N.I.T., the petitioner was supposed to file a Certificate from the Registrar of the Companies that :

(i) The petitioner-Company is not put into liquidation; and

(ii) It is an on going concern. Though, the Registrar of the Company, vide letter dated 12th February, 2002 certified that the Company is not put into liquidation, the other Certificate "that it is an on going concern", has not been given by the Registrar of the Companies.

18. Taking into consideration the aforesaid fact that the petitioner failed to comply various stringed conditions of the N.I.T., if the Member, Board of Revenue rejected the petitioner''s claim for grant of exclusive privilege for manufacture and wholesale supply of country liquor, vide impugned order dated 12th April, 2003, there appears to be no ground made to interfere with the same.

19. There being no merit, the writ petition is dismissed.