
(1998) 02 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 1160 of 1997 (R)

Station Club

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Citation : (1998) 1 BLJR 664

Hon'ble Judges : S.K. Chattopadhyaya, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—Impugning the Notification No. 23-1/97-648 dated 22.3.1997 so far it relates to the petitioner, Mr. Tapen Sen appearing on behalf of the petitioner has submitted that even assuming that the petitioner has no fundamental right to do trade or business in liquor but the State Government cannot enhance licence fee enormously. Further contention is that in the name of transferring its privilege the State cannot issue a notification clubbing all the clubs irrespective of its situation in town, city or village.

2. The petitioner runs a club in the name and style of "Station Club" in the town of Hazaribagh and for the benefits of its members they supply liquor to them. The petitioner paid licence fee and obtained a licence which was renewed for the years 1996-97. Therefore, for renewal of licence, fees for the years 1997-98 was deposited of Rs. 1,976 on 6.2.1997 with an application for renewal. By memo dated 30th March, 1997 petitioner's club was informed regarding revision of licence fee payable for renewal of excise licence by the impugned notification dated 22.3.1997 and the petitioner was directed to deposit Rs. 1,50,000/- as annual licence fee for renewal. On enquiry being made the petitioner came to know that by amending Rule 107(1) of the Bihar Excise Rules annual licence fee payable by clubs has been raised.

3. Grievance of the petitioner is that this enhancement in licence fee has been

done arbitrarily and there is no nexus between the enhanced rate and the present system of flat rate. According to Mr. Sen, for fixation of licence fee the State is required to reasonably classify the club with reference to consumption of liquor, the paying capacity of its members, the monthly turnover of the sale of liquor and other relevant factors.

4. Mr. P.D. Agrawal, Govt. Advocate, on the other hand, contends that the State Government has absolute discretion in enhancing the licence fee and the impugned amendment does not suffer from unconstitutional discrimination. According to him, before revising licence fee for hotel, restaurants, bars and clubs etc. informations were collected from the neighbouring States like the State of Uttar Pradesh and keeping in view the potentiality of the areas in which those hotels, restaurants, bars and clubs are located as well as the additional facilities the State Government has issued the said notification. Lastly he submitted with reference to the decision of the Supreme Court in the case of *Khodey Distillery Ltd. v. State of Kamataka* reported in 1996 (1) SCC 804, that it is permissible for the State Government to levy fees and under its regulatory power the State Government has right even to prohibit absolutely every form of activity in relation to intoxicants, its manufactures, storage, export, import, sale or possession. He submits that when the State of Kamataka enhanced the fee from Rs. 100/- to Rs. 25,000/- the same was upheld by the Supreme Court observing that by licence fee or fixed fee is meant the price or consideration which the Government charges to the licencees for parting with its privileges and granting them the licences. As the State can carry on a trade or business such a charge is the normal incidence of a trading or business transaction.

5. We need not detain ourselves in discussing the point raised by the parties elaborately inasmuch as recently in the case of *Smt. Guhbi Devi v. State of Bihar and Ors.* (CWJC No. 4047/97) a Division Bench by its order dated 3.11.1997, has held that the notification dated 22.3.1997 is not ultra vires and the same cannot be challenged on the ground of discrimination. In the aforesaid case the petitioner who was carrying on the business of running a restaurant and Bar, impugned the notification on the same ground as in the instant case, the difference being that in the instant case the petitioner is a club. In our considered opinion, when this Court has already held that the impugned notification is not bad on the ground of discrimination, the petitioner cannot get relief in this case.

6. In the result, we find no merit in this application and the same is dismissed. It is made clear that if the enhanced licence fee has not yet been paid as demanded from the petitioner-club, the same must be paid within 15 days from today and if not paid within the aforesaid period, the licence -fee will carry interest at the rate of 14% per annum.