(1991) 09 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No. 5548 of 1991

The Bihar Distillery Limited and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1992) 1 PLJR 570

Hon'ble Judges : S.N. Jha, J;Dharmpal Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition was filed on 19th August, 1991 making a grievance that the production and storage plant of the Petitioner-Distillery was sealed on 17th August, 1991, without disclosing any reason or serving any order of the competent authority. Prayer, accordingly was made for direction to the concerned Respondents to remove the seal as also to restrain them from interfering with the functioning of the Distillery, except in accordance with law.

2. A counter affidavit on behalf of the Collector, Siwan has been filed stating, inter alia, that the Petitioner''s licences in Exercise Forms Nos. 28 A and 25 have been cancelled by the Licensing Authority namely, Collector, Siwan, by his order dated 16th August, 1991. An application, in the circumstances, was filed on behalf of the Petitioners, making prayer for amendment of the reliefs sought for in the main writ petition by further direct the Respondents to produce the older of cancellation of the licences and thereafter to quash the aforesaid order. During course of hearing of this case on 2nd September, 1991, Mr. P.K. Shahi, learned Government Pleader No. 7 produced a copy of the order of the Collector, Siwan (Respondent No. 3) contained in memo No. 783 dated 16.8.91 addressed to Sri (sic) Pandey said to be Chairman-cum-Managing Director of the Distillery, who is also Petitioner no 2 in this writ petition. This case was had at length and with the consent of the parties is being disposel of at the stage of admission itself.

3. On the pleadings of tae parties as also as the basis of the submission of the learned Counsel, two points arise for coisideration. Firstly, whether there has been a proper service notice before cancellation and secondly, whether the order of cancellation, based on a Wind or allegation in respect of which admittedly no show cause notice had been given to the Petitioners can be sustained. As regards the first question, it would appear from perusal the counter affidavit that on 31.3.91 an executive Magistrate had conducted annual stock verification of the Distillery on the direction of the Collector. On the basis of the verification report dated 1.4.91 the Petitioners were directed to undertake white-washing of receiver chamber and storage and repairs of the upper portion of the receiver room. Since the aforesaid directions were not complied with, Petitioner No. 2 was directed by the Excise superintendent, Siwan, to show cause by his letter dated 4.5.91 as to why appropriate steps be not taken for cancellation of the licence for the alleged wilful disobedience of the directions. A copy of the said notice is Annexure-A to the counter affidavit. It is said that a special messenger deputed to serve the aforesaid notice, submitted a report on 10.5.91 to the effect that the ''recipient'' had refused to accept the same. It is said that, thereafter, on the directions of the Collector, Inspector of Excise was deputed to serve the notice, who also is said to have submitted a report on 31.5.91 that on 30.5.91 when he went to serve the notice the ''owner'' of the Distillery was not present and other officers in his absence refused to take the notice and, in the circumstances, the notice was pasted at the gate of the Distillery. A copy of the aforesaid so called service report dated 30.5.91 is Annexure-B to the counter affidavit. A perusal of Annexure-B, however, would show that it is not a show cause notice at all. It is only some sort of memorandum/service report containing in L. T. I. signatures, of two witnesses stating that on 30.5.91 the Excise Inspector, Siwan, had pasted a notice at the gate of Pachrukhi-Distillery on which the name of Viren Pandey, Chairman, has been mentioned and in token thereof those two persons had put in their L. T. Is. or signatures.

4. It is said that when these facts were brought to the notice of the Collector, he directed the Excise Superintendent to wait until expiry of the period mentioned in the show cause notice. In the meantime, on 10.7.91 the Distillery Officer submitted a report to the Excise Superintendent informing him that the management of the Distillery had started demolishing the western and eastern wall of the Fermentation house without any permission. A report to that effect is said to have been sent to the Secretary to the Excise Commissioner, Bihar, Patna, on 15.7.91. It is further said that on receipt of the aforesaid information, that is, in regard to the demolition of the wall, the Collector directed that show cause notice be asked for as to why the licences for the distillery be not cancelled for violation of the conditions of the licences. Accordingly a show cause notice as contained in memo No. 748 dated 3.8.91 was issued to Petitioner No. 2 to show cause within ten days against cancellation. A copy of the said notice dated 3.8.91 is Annexure-C to the counter affidavit. A perusal of the aforesaid notice would show that Petitioner No. 2 as the Chairman-cum-Managing Director of the

Distillery was directed to show cause why despite direction in that regard necessary rep airs ail white-washing of the receiver and storage chamber had not been carried out and, secondly, why without permission of the competent authority, the eastern and the western wall of the Fermentation house had been demolished. The aforesaid notice is said to have been sent through special messenger but the server could not meet the Petitioner No. 2 and other officers of the Distillery refused to take the notice". On 16.8.91 a fresh report was received from the Distillery Officer stating that Petitioner No. 2 had delivered a threatening letter to him. He also informed in his said report that necessary'' repairs etc. had not been carried out leading to seepage in the roof of the storage tank as a result of which water had entered into vat. On receipt of the aforesaid report, the Collector, directed the Superintendent of Excise to put up the same in the file and by order dated 16.8.91 the order of cancellation was passed.

5. The facts would show that, according to the stand of the Respondents, notice against cancellation was served on the Petitioners on two occasions, namely, on 30.5 91 and again on 3.8.91. As has been mentioned above, Annexure-B is not in the nature of show cause notice and it only purports to be a memorandum/ service report in regard to the service of notice. In the absence of the show cause notice, which is said to have been served by pasting the same at the gate of the Distillery, we are not in a position to know as to what were its contents, but it is obvious that it could not have been in respect of the alleged demolition of wall which was reported only on 10.7.91. So far as the other occasion when again notice is said to have been issued (but admittedly not served as the server could not meet Petitioner No. 2) is concerned, it would appear that only two grounds are mentioned in the show cause notice dated 3.8.91, namely, failure to carry out repairs and to do white washing and demolition of wall without permission. However, it would appear from the order of cancellation dated 16.8.91 that the order is also based on a fresh ground or allegation that the Distillery was not making supply of the allotted denatured spirit, which constitutes violation of condition No. 1 of the licence in Form No. 28A.

6. Mr. P.K. Shahi, learned Government Pleader No. 7, being obviously conscious of this fact that while cancelling the licence the Collector had taken into account a complaint or allegation in respect of which no opportunity of filing show cause had been given to the Petitioner, even if it is assumed that there was valid service of notice in respect of the other charge.(s) earlier, took the plea that the aforesaid additional ground is independent and severable from the other two grounds and, therefore, if the order of cancellation could be sustained in respect of the first two grounds this Court should not interfere merely for the reason that the Collector had taken into consideration and cancelled the licences on any additional or fresh ground as well. This argument is no doubt available in a case where the order is based on several charges, but is not the cumulative effect of all the charges taken together, if the order can be sustained on the basis of other charge (s). The instant case, however, stands on a different footing inasmuch as

no opportunity of showing cause at all was given to the Petitioners so far as the alleged violation of condition No. 1 of the licences in Form No. 28A by not making supply of the denatured spirit is concerned. It is elementary rule of natural justice that the person concerned should be informed of all the charges or grounds on the basis of which the order is proposel to be passed so that he may have an opportunity to explain the same. It may be true that the ground No. 3 mentioned in the show cause notice is severable or independent but it is difficult to say as to whether the impugned order of cancellation is or is not the cumulative'' effect of the charges taken together, Besides this, it is also to be borne in mind that the question of service of notice on two occasions, namely, on 30.5.91 and on 3.8.91 is itself shrouded in controversy, and it is difficult to record a finding that there was valid service of notice. Mr. Y.V. Giri, appearing for the Petitioners, in this connection submitted that the Petitioner No. 1 is a Public Limited Company and if the authorities were of the opinion that the Petitioner No. 2 or any officer of the company was evading service of notice nothing prevented them from serving a copy of the said notice (to show cause) by registered post. This submission, according to us, appears to be Justified.

7. In view of the infirmity in the order of cancellation, as pointed out above, coupled with the fact, that the Respondents have failed to prove the valid service of show cause notice on the Petitioners, we are of the opinion that, gill the facts and in the circumstances of the case, the order of cancellation cannot be sustained. The impugned order as contained in memo No. 783 dated 16.8.91 is, accordingly quashed. The Respondent Collector-will, however, be at liberty to proceed afresh in the matter by giving the Petitioners proper show cause notice containing all the grounds on the basis of which he may propose to cancel the licence (s) of the Petitioner-company and to proceed in the matter in accordance with law thereafter. In such an event, the Petitioners must cooperate in the disposal of the proceeding as may be initiated against them.

8. This writ application is, accordingly, allowed.

