(1997) 04 PAT CK 0071

In the Patna High Court

Case No : C.W.J.C. No. 800 of 1997 (R)

Vikas Kumar Singh and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:
Constitution of India, 1950 — Article 37, 39, 47

Citation : (1997) 2 BLJR 1431

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Chattopadhaya and M.Y. Eqbal, JJ.—In this writ application, the petitioners have prayed for quashing the notification dated 1.3.1997 issued by the respondent No. 3, the Asstt. Commissioner of Excise, Ranchi for auction of foreign liquor shop of the petitioner namely Hinoo No. 1 and Hatia. A copy of the said notification is Annexure-6 to the writ application. The petitioners shave also challenged the condition No. 4 of the sale notification as being illegal, arbitrary and without jurisdiction. The petitioners, further prayed for a direction to the respondents to grant renewal of their licence for the year 1997-98 as petitioners are holding current licence for their foreign liquor shop.

2. The facts of the case, in brief, as stated by the petitioners are as follows--

3. The petitioners were granted licence under the Excise Act for Indian made foreign liquor for the year 1996-97, They received notices dated 26.12.1996 from respondent No. 3 whereby they were informed that if they want to get their licence renewed they should make their application by 10.1.1997. Accordingly the petitioners applied for renewal in the office of the respondent No. 3. In the aforesaid notice a condition was put by the respondent that their renewal should be done on payment of full licence fee and lifting of their monthly quota as it was found that there has been decrease in lifting of their monthly quota. It is alleged

that without waiting for the replies from the petitioners, respondent No. 3 issued notification dated 1.3.1997 for the settlement of liquor shop by auction-cum-tender. According to the petitioner, the auction notice of these shops for which licence were granted to the petitioners for the year 1996- 97 is wholly arbitrary, illegal, and unconstitutional. It is further stated that condition No. 4 of the notice with regard to annual increase of 5% in the sale and lifting of foreign liquor is completely arbitrary, unwarranted and unreasonable and in violation of he directive principles of State policy, particularly Article 47 of the Constitutional of India. The petitioners further stated that the petitioners are unable to comply with the unreasonable and unconstitutional condition of increase of 5% of annual quota as petitioners cannot compel or motive persons to take liquor.

4. Counter-affidavit has been filed on behalf of the respondent No. 3 stating, inter alia, that the writ application was misconceived and not maintainable. The respondent No. 3 stated that the petitioners took settlement of the shops for the year 1996-97 under the sale notification dated 2.6.1996 without any demour knowing fully and aware of he conditions of the sale notification. The condition No. 4 of the sale notification is very clear that Indian made foreign liquor retail shop shall be renewed only at the increase of 5% of the annual quota of foreign liquor and 10% increase in reserved annual fee by the Collector of the District. The petitioners having once accepted the terms and conditions of the sale notification under which their shops were settled cannot be allowed to take out to avoid obligation under the licence. The respondent further stated that the fixed quota is the minimum guarantee for the licence whereas the licensees are free to lift more than the fixed quota. The fixation of quota to be lifted and annual increase of 5% is in the interest of revenue and public interest because it directly check calendestine trade of spurious liquor. It is further stated that the petitioners were found defaultors in lifting the quota, as a result of which the shops were advertised for auction for the financial year 1997-98.

5. We have heard Mr. M.S. Anwar, learned Counsel appearing for the petitioners and Mr. V. Shivnath, learned Government Pleader No. I.

6. Mr Anwar firstly challenged the notification and the conditions incorporated therein, as illegal, arbitrary and violative of the provisions of directive principle of the State policy, particularly Article 37, 39 and 47 of the Constitution of India. The learned Counsel then submitted that 5% increase in the annual sale of foreign liquor for renewal of licence is equally illegal and unconstitutional. The learned Counsel relied upon the decisions of P.N. Kaushal and Others Vs. Union of India (UOI) and Others, and Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, .

7. Admittedly the petitioner was granted licence for the year 1996-97 and thereafter the respondent authorities refused to renew the licence on the ground inter alia that the petitioners refused to fulfil the conditions contained in the sale notification. In that view of the matter, we are of the opinion that the petitioners,

being the licensee after having accepted the terms and conditions of the notification cannot be allowed to say that the increase in the licence fee or lifting of minimum guarantee quota are illegal and arbitrary. The question has been set at rest by the Apex Court in Ranchi Wine Dealers'' Welfare Association v. State of Bihar 1991 (1) PLJR 161 and in Mohd. Fida Karim and another Vs. State of Bihar and others, .

8. In Ranchi Wine Dealers'' Welfare Association (supra) it was held that the right to deal in intoxicants basically belongs to the State Government and grant of a licence to deal in, liquor merely a privilege which is derived by the licensee to deal therein to the extent permitted by the licence. Such activities on the part of the liquor dealer is subject to regulatory measures which may be adopted by the State from time to time.

9. In Md. Fadakarim case (supra), the controversy was regarding the mode of settlement of right of vend of country liquor. India made foreign liquor and spiced country liquor under the provisions of Bihar Excise Act, 1950, and the Rules made thereunder. The Government changed its policy from time to time. It was held in that case that the Government has every right to fix conditions by changing its policy which cannot be said to be illegal.

10. Having regard to the facts and circumstances of the case, we are of the view that there is no merit in this application which is accordingly dismissed.

