(2014) 04 PAT CK 0074

In the Patna High Court

Case No : C.W.J.C. No. 20531 of 2012

Welcome Distillery Pvt. Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 2(7), 20, 22, 22-D, 22-G
Constitution of India, 1950 — Article 226, 47

Citation : (2015) 1 PLJR 609

Hon'ble Judges : Rekha M. Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Ashish Giri, Advocates for the Appellant; Piyush Lal and Vikash Kumar, Advocates for the Respondent

Judgement

Rekha M. Doshit, C.J.—This Petition under Article 226 of the Constitution has been filed by one M/s. Welcome Distillery Private Limited, a manufacturer of country liquor against the order dated 20th October, 2012 made by the Secretary to the Government of Bihar, Department of Prohibition and Excise, cancelling the licence granted to the petitioner and blacklisting it. This Petition was earlier dismissed by a Bench of this Court by order dated 10th January, 2013. On an application being Civil Review No. 68 of 2013 the aforesaid order dated 10th January, 2013 was recalled and the Petition was restored under order dated 10th April, 2013. The said order dated 10th April 2013 having been made ex parte against the respondent Nos. 8, 9 and 10 the Civil Review was heard again and was allowed on 12th February, 2014. The Petition has since then been heard by us.

2. Learned counsel Mr. Jitendra Singh has appeared for the petitioner. He has taken us through the voluminous records of the writ petition. He has relied on the Bihar Excise Act, 1915 (hereinafter referred to as ''the Act'') particularly Sections 2(7), 42, 46, 20 and 22 of the Act. He has also relied upon the judgments of the Hon''ble Supreme Court in the matters of R. Chitralekha and

Another Vs. State of Mysore and Others, , S.L. Kapoor Vs. Jagmohan and Others, , Reckitt and Colman of India Ltd. Vs. Collector of Central Excise, , Roop Singh Negi Vs. Punjab National Bank and Others, and Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, .

3. The upshot of the long winding arguments is two-fold. First, the order has been challenged on the ground of the authority of the Secretary, Department of Prohibition and Excise. Mr. Singh has vehemently submitted that it is the Collector who is empowered to grant licence for manufacture of liquor and it is the Collector who is empowered to take punitive action including cancellation of the licence. Mr. Jitendra Singh has submitted that neither the State Government nor the Secretary of the Department has the authority to make order to cancel the licence. In the present case, evidently the impugned order has been made by the Secretary of the Department not in the name of the State of Bihar. The Secretary has thus acceded his jurisdiction and has usurped the power conferred upon the Collector under Section 42 of the Act. The impugned order has thus been made without the authority of law.

4. Mr. Jitendra Singh has further submitted that the impugned order has been made without giving proper opportunity of defence to the petitioner. He has taken us through the show cause notice issued on 14th September, 2012. He has submitted that under the said show cause notice the petitioner was apprised of its shortcoming that the petitioner had failed to supply the minimum guaranteed quota to the Bihar State Beverage Corporation. The petitioner was not called upon to answer or to show cause against the intended action of imposing any punishment or of cancellation of licence or of blacklisting the petitioner. Mr. Jitendra Singh has also submitted that the impugned order is made on the materials which were not mentioned or referred to in the show cause notice. The impugned order has thus been made on extraneous materials. The impugned order is vitiated for contravention of principle of natural justice and fair play.

5. The second arm of the challenge to the impugned order is that the order of cancellation of licence is uncalled for. He has submitted that the licence was granted for three years from 1st April, 2009 to 31st March, 2012. It is true that after expiry of the period of licence on 31st March, 2012, the licence was extended for short periods until 30th September, 2012. It was during the said extended period of licence that show cause notice was issued on 14th September, 2012, just short of a fortnight from the date of expiry of the licence. He has further submitted that mala fide is writ large in the action of the respondents inasmuch as soon after the grant of licence in 2009 the action was initiated against the petitioner for cancellation of licence. Evidently, the State Government did not succeed in the said attempt to cancel the licence. In the submission of Mr. Jitendra Singh, the action of the respondent No. 2, the Secretary to the Government of Bihar, Excise Department, is clearly vindictive and is vitiated by mala fides.

6. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared

for the respondents. We must note that as early as on 10th March, 2014, Mr. Lalit Kishore had fairly conceded that the order blacklisting the petitioner was defective and would not survive the test of judicial review by this Court. In view of the submission made by Mr. Lalit Kishore, under order dated 10th March, 2014, the impugned order dated 20th October, 2012 to the extent of putting the petitioner in blacklist was quashed and set aside.

7. Mr. Lalit Kishore has submitted that the impugned order of cancelling licence has necessarily been made by the Government of Bihar and is not an order of the Secretary as alleged. He has brought the original files for perusal and for satisfaction of the Court that the order was indeed made by the Government of Bihar. The files have been perused by learned Advocate Mr. Ashish Giri appearing for the petitioner.

8. Lalit Kishore has submitted that trade or business in liquor and intoxicating substances is regulated by the State Government and cannot be equated with any other trade or business. He has submitted that the traders dealing with the liquor cannot press into service fundamental right to business or profession like any other business or profession. He has relied on Section 22-D of the Act. Mr. Lalit Kishore has taken us through the show cause notice dated 14th September, 2012 and the impugned order dated 20th October, 2012. He has submitted that the show cause notice was very specific in so far as the petitioner had ailed to supply the minimum quota guaranteed under the licence. The petitioner has not challenged the facts and figures stated in the said show cause notice. He has submitted that in reply to the show cause notice the petitioner has raised a dispute in respect of supply of rectified spirit, the raw material, again controlled by the State Government. The said objection raised by the petitioner has been dealt with by the State Government in the impugned order. He has submitted that the allegation that the impugned order travels beyond the show cause notice is not sustainable.

9. The proposition made by Mr. Jitendra Singh supported by the above-referred judgments is not questionable. As held by the Hon''ble Supreme Court as early as in the year 1980 in the matter of S.L. Kapoor (supra) and even earlier, there is no distinction between a quasi-judicial action or administrative action in so far as the principle of audi alteram partem or fair play in administrative action is concerned. It cannot be gainsaid that any action of the State, be it quasi-judicial or be it administrative, calls for fair play inasmuch as the concerned party is required to be given fair opportunity of defence against the intended action and to meet with the allegations made against such party. The State cannot use the material which the concerned party had no opportunity to meet with. Any order passed on such extraneous materials contravenes the principle of fair play.

10. We, however, on facts, do not agree with Mr. Jitendra Singh that in the present case the petitioner did not have the opportunity to meet the allegation made against the petitioner. The petitioner had well been informed of its shortcomings. Although the State Government did indicate its intention to take

action against the petitioner for the shortfall in supply of the liquor, true the notice did not indicate that the petitioner would be blacklisted. To that extent, Mr. Lalit Kishore had fairly conceded as early as on 10th March, 2014 that that part of the order was not sustainable. His concession was recorded by us in our order dated 10th March, 2014 and the order to the extent the petitioner was blacklisted was set aside.

11. It is evident that the petitioner did not deny the factum of shortfall in supply of the liquor as alleged. The petitioner, however, had the justification for shortfall. The justification put forth by the petitioner has been considered by the State Government. The said justification did not find favour with the State Government. The detailed discussion in this behalf made in the impugned order cannot be said to be extraneous materials used against the petitioner. In our opinion, the impugned order is not vitiated for contravention of the principles of natural justice or fair play.

12. The impugned order having been challenged on the ground of lack of legal authority, we shall now consider certain'' provisions of the Act.

13. As the title and preamble suggest, the Act has been enacted by the State Legislature to regulate manufacture, storage, transport, wholesale and retail sale of the liquor. The power of the State Government to control the manufacture and sale of the liquor is not in question. Article 47 of the Constitution imposes a fundamental obligation upon the State Government to bring about prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health. It is now scientifically and medically proved that liquor is addictive. If consumed otherwise than in moderate proportion, causes immense issues of health and also of social behaviour. It is said, "of all the problems in human society, there is probably none which is as closely related to criminal behaviour as is drunkenness" ("The Criminal Problem" by Walter Reckless) P.N. Kaushal and Others Vs. Union of India (UOI) and Others, . A person, well informed and learned in the subject can write volumes. The persons like us, the lay people, can write at least an essay. It is established that the violence and the rate of crime in the society are directly proportionate to drunkenness. That is the reason, the founding fathers thought it necessary to make obligatory upon the State Governments to bring about the prohibition of consumption of liquor (intoxicating drinks) in Article 47 of the Constitution under the ''Directive Principles of the State Policy''. It is, however, apparent that the State Government, instead of bringing prohibition of consumption of liquor would regulate the business so as to generate revenue for the State Government. Naturally the State Government zealously controls the manufacture and sale of liquor at every stage. Molasses, a by-product of sugar industry is the raw material for manufacture of liquor. The State Government intervenes and controls the sale of molasses. The manufacture, storage, bottling/sacheting, transport, wholesale sale and retail sale each is a controlled activity and generates revenue for the State.

14. Neither we are called upon nor are we inclined to discuss the wisdom of the

State Policy in respect of the liquor business. The fact is that it is a business completely controlled by the State Government. Section 20 of the Act prohibits, inter alia, manufacture of liquor without a licence granted in that behalf by the Collector. Section 22 of the Act empowers the State Government, inter alia, to grant exclusive privilege of manufacture and sale of country liquor. Section 22-D empowers the State Government to grant exclusive or special privilege for bottling/sacheting and wholesale supply of country liquor. Similar provisions are made in Section 22-G of the Act in respect of the spiced country liquor. It is in exercise of power conferred by Section 22-D of the Act the petitioner was granted exclusive privilege in respect of country liquor for three years from 1st April, 2009 to 31st March, 2012. In furtherance of the said grant, the Collector had issued the required licence. We may note here that Section 22-D of the Act although empowers the State Government to grant the special privilege, the power to grant licence in terms of the privilege is vested in the Excise Commissioner/Collector. The only remedy in case of erring licensees would be a penal action under Section 42 of the Act by the licence granting authority. Once the licence is issued as envisaged by Section 22-D of the Act, the manner in which it can be terminated is found in Sections 42, 43 and 44 of the Act. Section 42 of the Act empowers the licensing authority, to cancel or suspend the licence or to impose penalty. The provision is vary clear and specific; "The authority who granted any licence, permit or pass under this Act may cancel, suspend it or impose penalty". Section 43 of the Act empowers the licensing authority to withdraw the licence Section 44 of the Act provides for surrender of the licence. The'' Legislature has thus empowered the licensing authority alone to cancel or suspend the licence. The licensing authority is not empowered to delegate the said power to any other authority either. Thus no authority other than one who granted the licence can suspend or cancel the licence. In the present case, the Collector had granted the licence. It was the Collector alone who could have taken action against the petitioner for cancelling the licence.

15. We do not dispute that the impugned order though has been made by the Secretary of the Department, it is essentially an order by the State Government as disclosed from the original files. Nevertheless, not even the State Government is empowered to take action for cancelling the licence. Once the Legislature has imposed a duty upon a particular authority or has vested power in a particular authority to act in a particular situation, it is that authority alone which has to discharge its statutory obligation. Even an authority superior to the statutory authority cannot interfere in the matter to exercise/impose its own wisdom. Such an action taken by any other, may be superior authority would amount to usurpation of power. Such action has never been allowed by the court of law. The matter has been succinctly discussed by the Hon''ble Supreme Court in the matter of Manohar Lal (supra). In the present case, admittedly, the show cause notice was issued by the State Government and the impugned order too has been made by the State Government. The State Government has thus usurped the power of cancellation of licence conferred upon the licensing authority

(Collector). The impugned order, in our opinion, has been made by the State Government without the authority of law and is vitiated.

16. Now that we have held that the impugned order has been made without the authority of law and is not sustainable, we need not examine the vague allegation of mala fide made against the State Government. For the aforesaid reasons, the Writ Petition is allowed. The impugned order dated 20th October, 2012 made by the Secretary to the Government of Bihar, Department of Excise and Prohibition is quashed and set aside. Legal consequences shall follow. The parties shall bear their own costs.

