(2006) 03 JH CK 0049

In the Jharkhand High Court

Case No : Writ Petition (C) Appeal No. 5571 of 2005

Yogendra Tiwary APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:
Jharkhand Excise Rules — Rule 106

Citation : (2006) 3 JCR 101

Hon'ble Judges : S.J. Mukhopadhaya, J;Dilip kumar sinha, J

Bench : Division Bench

Advocate : Delip Jerath and Sujit Narayan, for the Appellant; J.C. to S.C. III, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, who is a wholesale licensee of Indian make foreign liquor, has challenged the order contained in Memo No. 444, dated 2nd May, 2005 issued by the 5th respondent, whereby and whereunder he has been directed to deposit difference of amount of Rs. 3,50,000/- on account of enhanced licence fee for the year 2005-2006.

2. According to the petitioner, fee for renewal of licence amounting to Rs. 1,50,000/- having been deposited in terms with the guidelines as was in vogue, the respondents cannot ask for depositing the difference of licence fee on the basis of enhancement made subsequently.

3. In this case it is not in dispute that a sum of Rs. 1,50,000/-, was fixed as licence fee for grant of wholesale licence for sale of Indian make foreign liquor. It was enhanced vide Notification No. 522 dated 12th April, 2005 issued by the order of the ''Board of Revenue'', Jharkhand after suitable modification of Rule 106 of Bihar (Jharkhand) Excise Act, 1915, from Rs. 1,50,000/- to Rs. 5,00,000/- for each financial year or part therefore.

4. Learned Counsel for the State brought to the notice of the Court that the

petitioner applied for renewal of licence and deposited a sum of Rs. 1,50,000 on 31st March, 2005, but the licence was not renewed. In the meantime, Rule 106 of the Bihar (now Jharkhand) Excise Act, 1915 was amended by Notification No. 522, dated 12th April, 2005. From Annexure-B/1 it appears that on 2nd May, 2005 the petitioner had given an undertaking that he will pay difference of amount of Rs. 3,50,000/- and the actually deposited the balance amount on 23rd November, 2005 wherein after, the licence was renewed on 24th November 2005. Having taken advantage of renewal of licence by paying the amount in full, now it is not open to him to challenge the notification in question.

5. Counsel for the petitioner relied on a Supreme Court decision in P. Mahendran and others Vs. State of Karnataka and others, . In the said case the Supreme Court held that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect, but the said decision is not applicable in the present case. The Rule having been amended from the prospective date and prior to renewal of licence.

6. Learned Counsel for the petitioner also relied on a decision of this Court in the case of Ram Kumar Singh Choudhary and Ors. v. The State of Jharkhand and Ors. in W.P. (C) No. 4521 of 2004 and analogous cases disposed of on 2nd February, 2005, that was a case relating to grant of Bar licence which was also enhanced by a Notification No. 1142 (B), dated 31st July, 2004 for the year 2004-05. Division Bench of this Court having noticed the facts aforesaid held that the enhancement of the licence fee, as sought by the said notification, will not be applicable in the case or the cases where licence had already been renewed on realization of requisite fee.

7. As in the case of petitioner, the licence has been renewed after the amendment of Rule, we find no similarity with the case of the petitioner and the case of Ram Kumar Singh Choudhary (supra). Further the petitioner having undertaken to deposit the difference of amount by his representation contained in Annexure- B/1 to the counter-affidavit, we find not ground made out to grant any relief. There being no merit, the writ petition is dismissed.

