IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3833 of 2015

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Pankaj Kumar Alok, Son of Sri Ghanshyam Prasad, Resident of Prabhat Colony , P.O. Purnea, P.S.- K. Hat, District- Purnea.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary cum Excise Commissioner, Department of Registration, Excise and Prohibition.
2. The Collector, Purnea.
3. The District Magistrate, Purnea.
4. The Deputy Commissioner, Excise, Darbhanga cum Koshi cum Purnea , Division, Darbhanga.
5. The Excise Superintendent, Purnea.

.... Respondents

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with

Civil Writ Jurisdiction Case No.4012 of 2015

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Rabindra Kumar Yadav, son of Late Sukhdeo Prasad Yadav, resident of Saheban Hata, Janta Chowk , P.S.- K. Hat , District- Purnea.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Secretary cum Commissioner Excise , Bihar , Patna.
3. The Excise Commissioner, Bihar, Patna
4. The Collector, Purnea
5. The Superintendent of Excise, Purnea

.... Respondents

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with

Civil Writ Jurisdiction Case No.4018 of 2015

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Vishwajeet Kumar Singh, son of Arun Kumar Singh, resident of Kalibari Chowk, Matta Bazar, Police Station – K.Hat, District - Purnea.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Excise, Prohibition and Registration Department, Government of Bihar, Patna.
2. The Principal Secretary, Excise, Prohibition and Registration Department, Government of Bihar, Patna.
3. The Commissioner, Excise & Prohibition Department, Government of Bihar, Patna.
4. The Collector cum District Magistrate, Purnea.

.... Respondents

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Appearance :
(In CWJC No.3833 of 2015)
For the Petitioner : Mr. N.K. Agarwal, Sr. Advocate
Mr. Saket Tiwary, Advocate
Mr. Sanjeev Kumar Dubey, Advocate
For the S t a t e : Mr. Lalit Kishore, PAAG
Mr. Vikash Kumar, A.C. to PAAG
(In CWJC No.4012 of 2015)
For the Petitioner : Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate
For the S t a t e : Mr. Lalit Kishore, PAAG
(In CWJC No.4018 of 2015)
For the Petitioner : Mr. Y.V. Giri, Sr. Advocate
Mr. Rana Vikram Singh, Advocate
For the S t a t e : Mr. Vikash Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 17-03-2015 Heard learned counsels for petitioners of all the three writ applications and learned counsel for the State.

Since all the three writ applications have been filed with respect to the settlement of retail liquor shops in the district of Purnea and raise common issues, they have accordingly been heard together and are being disposed of by this common order.

CWJC Nos.3833 of 2015 and 4012 of 2015 have been filed for quashing the order dated

11.3.2015 contained in Memo No.1152, issued by the Secretary-cum-Excise Commissioner, Bihar, Patna, by which the date of submission of applications for settlement of liquor shops has been extended from 9.3.2015 to 14.3.2015 and for consequential directions.

CWJC No.4018 of 2015 has been filed seeking issuance of direction to the respondent-authorities to accept the tender documents and required fees from the petitioner for settlement of liquor shops situated in Group Nos.1 to 17 and allow the petitioner to participate in the tender process.

For the settlement of retail liquor shops in the district of Purnea, different retail shops have been categorized in 53 Groups for which under sale notice dated 26.2.2015 an advertisement was published by the Collector, Purnea in different newspapers. Under the said sale notice dated 26.2.2015, the last date of submission of applications was fixed as 9.3.2015 and the date of settlement was fixed as 14.3.2015, which was to be decided by the draw of lots in favour of the applicants for the particular group of shops. As many as 4,880 applications were received for 53 groups of shops till the last date of submission of application, i.e., 9.3.2015, which fact was reiterated by letter dated 11.3.2015 of the Excise Superintendent, Purnea, addressed to the Secretary to the Excise Commissioner, Bihar. Thereafter, by letter dated 11.3.2015, addressed to the Collector, Purnea, the Excise Commissioner informed the Collector that for unavoidable reasons, the date of settlement of shops for the district is extended from 14.3.2015 to 18.3.2015 and the applications for the same be received till 14.3.2015 so that cent per cent settlement can be made. Pursuant to the same, fresh applications were accepted till 13.3.2015 on which date this Court passed an interim order staying the letter dated 11.3.2015 issued by the Excise Commissioner and any notification pursuant to the same.

The petitioner of CWJC No.4018 of 2015 (Vishwajeet Kumar Singh) has filed the writ application on 11.3.2015 seeking a direction for acceptance of his tender documents and required fees on the ground that when he along with his staff had after arranging fees and requisite tender documents moved for submitting the forms and depositing the application fees in one of the counters, then, all of a sudden, two persons, namely, one Pratap Kumar Singh and one Pankaj Singh, both sons of one Jai Mangal Singh, forcibly snatched the forms and the requisite amount of Rs.22,00,000/- from the petitioner and his staff on gun point and fled away, for which an F.I.R. was also lodged on the same day and the Collector of the district was apprised of the incident. However, the Collector did not accept his request for any extension of time for deposit of the application forms and fees. Aggrieved by the same, the petitioner has approached this Court.

Learned counsels for the petitioners in CWJC No.3833 of 2015 and CWJC No.4012 of 2015 submit that since a huge number of applications totalling 4880 had been received for all the 53 groups of shops and the settlements were to be made through lottery and applications had been received for all the shops, there was no justifiable or rational ground for the Excise Commissioner to issue the letter dated 11.3.2015 not only extending the date of settlement from 14th to 18th March, 2015 but also the last date of receipt of applications to 14.3.2015.

It is submitted by learned counsels for the aforesaid petitioners that the same has evidently been done to benefit certain persons who failed to file their applications by 9th March, 2015 and the said fact is also corroborated by the subsequent development, as it has been informed by the State that as many as 460 fresh applications have been received, of which, admittedly, 203 applications have been received for Group Nos.1 to 17 i.e., with respect to which groups the petitioner Vishwajeet Kumar Singh of CWJC No.4018 of 2015 is concerned. It is the stand of these two petitioners that the entire thing has been managed by the said petitioner Vishwajeet Kumar Singh and from the list of fresh applications, it is evident that he is the main beneficiary of extension of date as less number of applications had been received with respect to most of the 17 groups of shops giving unfair advantage to the said petitioner and his family members numbering 11 in draw of lots.

It is also submitted by learned counsel for the petitioners of the first two writ petitions that no reason has been assigned in the impugned letter dated 11.3.2015 of the Excise Commissioner, whereas in the letter of extension granted with respect to extension of date with regard to a few of districts like Lakhisarai, Nalanda, Kishanganj and Rohtas it has been clearly stated that on proper analysis of the applications received, the Excise Commissioner was of the view that the number of applications received and the shop applied for is not satisfactory and for the said reason, the extension of dates was granted whereas no consideration has been made in the matter of grant of extension of date of submission of the applications for Purnea district since evidently more applications had already been received than the previous year.

Learned counsel for the petitioner Vishwajeet Kumar Singh, on the other hand, submits that in the given circumstances of the incident that had taken place of snatching of his application forms and application money, the petitioner ought to be given an opportunity to apply, which, in fact, he has done after the extension of date and the petitioner should be permitted to participate in the draw of lots.

It is submitted by learned counsel appearing for this petitioner that it was the duty of the respondent-authorities to ensure proper law and order in the campus of the Collectorate where the applications were being received and, thus, if the application forms and the application money of the petitioner have been snatched by anti-social elements, then the benefit of the same ought to be given to the petitioner so that the confidence of the people is restored in the settlement process, otherwise everyone can get money and document snatched.

It is submitted by learned counsel for this petitioner that the participation of the petitioner would only lead to wider competition which will be in the interest of the settlement process.

It is also submitted that no prejudice would be caused to the petitioners of other two writ petitions if he was permitted to participate and the benefit ought to be given to the petitioner since he is not at fault as he had filed an F.I.R. soon after the occurrence of snatching.

Learned counsel for the State, on the other hand, emphatically submits that the extension of date was not for the benefit of an individual as the Excise Commissioner was not aware of the representation of the petitioner Vishwajeet Kumar Singh. The Excise Commissioner has extended the date for the benefit of revenue as the application money received in the present year was less than the application money received in the previous year as per the report of the Excise Superintendent himself given on 11.3.2015 and taking into account of the same, the date of filing application was extended, which has resulted in additional revenue of Rs.35,00,000/- to the State on account of sale of the forms.

It is further submitted by learned counsel for the State that the action of the Excise Commissioner was not to give benefit to any individual; rather to ensure 100% settlement.

It is also the stand of learned counsel for the State that for the aforesaid reasons, the date of submission of the applications for settlement of liquor shops has been extended from 9.3.2015 to 14.3.2015.

We have considered the submissions of learned counsels for the parties. We may here refer to one of the pleas of learned counsel for the petitioners to seek quashing of letter dated 11.3.2015 that the Excise Commissioner has no power to grant any such extension of the date of submission in terms of the provisions of Rule 6 of the Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007 as the only authority conferred upon him is to initially fix the date of submission and thereafter any deferment can be made by the Collector and not by him.

In our opinion, the said submission cannot be accepted as under Section 16 of the Bihar & Orissa General Clauses Act, 1917, any statutory power conferred may be exercised and the duty cast may be performed from time to time as the occasion requires and, further, under Section 24 of the said Act, power to make or issue notifications, orders etc. includes the power to add to, amend, vary or rescind, such notifications, order etc. Thus, it is always open to the Excise Commissioner, in exercise of the power conferred upon him and in the interest of revenue or for any other good ground, to extend the date of settlement or even the date of receipt of application. However, all such powers must be exercised in a manner that it is just, fair and reasonable and is not arbitrary or whimsical.

In the counter affidavit filed on behalf of the State it is stated that extension of date was made with regard to four other districts apart from Purnea, in which the date of submission has also been extended. With respect to other four districts, a reference was made that the number of applications and shops applied for were not satisfactory and for the said reason the date of receipt of application has been extended. However, in the case of Purnea reasons are completely lacking and only the vague term "*Apariharya Karano Se*" has been used in support of such extension.

Even in the counter affidavit a lame attempt has been made to show that extension of the date was made for the interest of revenue of the State as Rs.35,00,000/- was earned by way of sale of additional forms. The same, however, cannot be construed as a good and valid reason for extending the date of application and that too, after the last date of filing of application has elapsed as it may lead to a situation where certain persons can corner the shops by making a large number of applications with respect to a few groups. The same, in fact, has happened in the present matter as is evident from the figures available before us for Group Nos.1 to 17, in which barring Group Nos.7 and 16, the number of applications were to a lesser extent particularly with respect to Group Nos. 10, 11, 14, 15 and 17. The number of applications received earlier have been practically overshadowed by filing of 11 applications with respect to each of the groups by the petitioner Viswajeet Kumar Singh. The said petitioner would thus gain unfair advantage in the draw of lots that may be held and would corner a large number of shops on account of the probabilities involved in such draw of lots.

Once the sale notice is issued fixing the last date of receipt of application, then normally the same should not be disturbed unless there are good and sufficient grounds for extending the date of application. For such extension, consideration cannot be of receipt of revenue from the sale of forms; rather if there had been application for each group of the shops, then no loss of revenue would result as the settlement has to be made by draw of lots and not by a bidding process. Thus, no loss of revenue would occur to the State whether application for a particular group of shops was made by one person or by several or more persons. Thus, practically, the only reason for extension of date of application can be when it is found that there has not been application received for several groups of shops in a particular district.

So far as the stand of the petitioner Vishwajeet Kumar Singh is concerned, we are of the view that the incident, as alleged by him to have taken place, may have occurred, but nothing has been brought on the record to show that it has been found to be a genuine incident or actually a sum of Rs.22,00,000/- had been snatched or that the applications at that time had been kept ready for 187 shops. The allegation made by the said petitioner, that too involving his business rival and specifically naming his sons, *prima facie* does not appear to be very likely as no person of ordinary prudence is expected even if he is involved in such snatching to have caused the same to be done by his sons. Thus, no benefit of doubt can be granted to said petitioner in the matter, especially when, according to his case, he has gone to make deposit at the fag end of the last date i.e., 9.3.2015 whereas the sale notification itself had been published on 26th February, 2015.

Thus, on a consideration of all aspects of the matter, the writ applications, bearing C.W.J.C. Nos.3833 of 2015 and 4012 of 2015 are allowed. The order dated 11.3.2015 of the Secretary-cum-Excise Commissioner is quashed. C.W.J.C. No.4018 of 2015 is dismissed. Any application filed pursuant to the order dated 11.3.2015 shall not be taken into consideration in the process of settlement of excise shops in the district of Purnea.

The respondents are directed to refund the amount of application money received from all 460 fresh applicants, including the petitioner Vishwajeet Kumar Singh and his family members, within a period of three weeks from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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