IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6267 of 2015

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Abhinay Kumar son of Shri Prem Chand Jaiswal, resident of Pratap Patti, P.S. Shahebganj, District Muzaffarpur

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Satyabir Bharti

For the Respondents : 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 JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 07-05-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks a direction upon respondent Nos. 4 and 5, the Collector, Muzaffarpur and the Superintendent of Excise, Muzaffarpur respectively to conclude the settlement and issue licence in favour of the petitioner with respect to Group No.103, Retail Liquor Shop for the financial year 2015-16.

Pursuant to a sale notice for settlement of Retail Liquor Shops in Muzaffarpur District, the petitioner applied for, among others, Group No.103. The petitioner was also a licensee for the year 2013-14 of Retail Liquor Shop Group No.102 comprising of composite liquor Shop Nos. 105 and 106 and admittedly he had arrears of excise revenue to the extent of Rs. 2,93,796/-, for which Certificate Case No.1289 of 2014-15 was also initiated against him and was pending before the Certificate Officer, Muzaffarpur on the basis of the requisition made by the Excise Superintendent, Muzaffarpur. Upon the receipt of notice in certificate case, the petitioner approached the certificate officer on 28.2.2015 for payment of outstanding dues which was not accepted and the petitioner was directed to accept on 14.3.2015. On the said date, the application of the petitioner was accepted and the Sub-divisional Nazir was directed to accept deposit of the said amount and issue cheque to the requisitionist for the same. The petitioner claims to have deposited the cheque for the said amount on 16.3.2015 under receipt issued by the Sub-divisional Nazir but did not produce the said receipt before the settlement authority on the same day while the draw of lot was going on in which he emerged successful. The petitioner approached the District Magistrate on 24.3.2015 with a representation for issuance of licence wherein for the first time he produced the said Nazir receipt. Since no further action was taken by the respondent authorities, the petitioner filed the present writ application on 20.4.2015.

The stand of the respondents is that in the facts of the case , the District Magistrate, Muzaffarpur directed an enquiry to be made in the matter regarding the alleged deposit made by the petitioner and a report was submitted by the Deputy Development Commissioner, Muzaffarpur on 30.4.2015, in which it was stated that on the basis of entries made in the land ceiling cash book and the general cash book as also on the basis of other materials it came to light that as a matter of fact no action was taken on 16.3.2015 and the receipt issued by the Sub-divisional Nazir was antedated as 16.3.2015. It is stated in the said report that the deposit of Rs. 2,93, 796 was reflected for the first time on 22.3.2015 in the general cash register although in the land ceiling cash register the said amount was shown as income and on 23.3.2015 as expenditure. The further findings were that the petitioner had deposited a false affidavit on 9.3.2015 with regard to there being no arrears of excise revenue against him. It is stated in the report that on 20.3.2015, the petitioner had approached the Excise Superintendent for depositing the amount. Further, interpolation was found in the records of the D.C.L.R. Therefore, the Nazir Receipt was obtained by antedating the same. It was accordingly proposed to initiate legal proceedings and departmental proceedings against the Sub-divisional Nazir and proceedings were proposed to be initiated against the petitioner also.

Learned counsel for the petitioner has sought to argue his entire case on the basis of Nazir Receipt dated 16.3.2015. He also submits that under the rules of settlement, the petitioner was required to deposit the amount before the settlement which he has done and further his name was not shown in the concerned register and thus he was not required to produce any receipt before the respondent authorities.

Learned counsel for the petitioner further submits that it was only due to the action of the Certificate Officer in not accepting the amount on 28.2.2015, when the petitioner first approached him, that the delay has occurred.

Learned counsel for the State, on the other hand, submits that there was no requirement to deposit the arrear amount before the Certificate Officer as he could have easily deposited the said arrears before the Excise Superintendent and after obtaining a certificate of deposit of the same, simply he could have produced the certificate before the Certificate Officer for proving that the certificate dues had been liquidated but he did not do so. It is further submitted that the petitioner having indulged in malpractices including getting the records interpolated and Nazir Receipt issued antedated, this Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

On a consideration of the facts and circumstances of the case and the submissions of learned counsel for the parties, we find sufficient force in the submissions of learned counsel for the State.

It is evident from the materials on the record that the petitioner has not acted in a fair and above-board manner in the present matter. If the petitioner had the Nazir Receipt on 16.3.2015 then nothing prevented him from producing the same at the time of draw of lot before the respondent authorities and thus it cannot be said that the petitioner was not a defaulter.

In the said circumstances, no benefit can be derived by the petitioner on account of the fact that the name of the petitioner did not appear in the concerned register. It was for the petitioner to have complied with the terms and conditions which were clear that a person who has arrears of excise dues would not be competent for the settlement and thus he ought to have cleared the dues before the settlement process and he ought to have produced the receipt before the respondent authorities for being eligible for the settlement process.

The rules being statutory, no benefit can be derived by the petitioner on account of any laches of the respondent authorities. Moreover, this Court is in agreement with learned counsel for the State that the petitioner having indulged in malpractices in the matter is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution, which is a discretionary jurisdiction.

The writ application is, accordingly, dismissed.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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