IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15369 of 2014

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Om Prakash Yadav S/o Sri Umesh Kumar Yadav @ Chhedi Yadav, Resident of Mohalla- Kasim Bazar, P.S. Kasim Bazar, Distt- Munger.

.... Petitioner

Versus

1. The State of Bihar through the Secretary Department of Excise, Govt. of Bihar, Patna.
2. The Commissioner of Excise, Bhagalpur- cum- Munger Division, Bhagalpur.
3. The Deputy Commissioner of Excise, Bhagalpur cum Munger Division.
4. The Excise Superintendent, Munger.
5. The Depot Manager, Bihar State Beverages Corporation Ltd. Composite wine depot, Sadar Block, Share Garden, Sita Kund, Munger.

.... Respondents

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Appearance :
For the Petitioner : Mr. Shailendra Kumar Sinha
Mr. Raj Kumar, Advocates
For the State : Mr. Vikas Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 15-01-2015

I.A. No. 6753 of 2014:

The interlocutory application has been filed for amendment in the writ application so as to seek quashing of the fresh demand notice as contained in the letter dated 28.7.2014 by which the petitioner has been directed to deposit the embezzled amount of licence fee of Rs. 28,78,000/- for the year 2012-13 and Rs. 17,37,350/- for the year 2013-14 totalling to Rs. 46,15,350/- in terms of the audit report.

Learned counsel for the petitioner submits that the writ application was filed for quashing of the demand of Rs. 48,77,135/- and since the same has been revised by the letter dated 28.7.2014 he should be permitted to challenge the same also by making amendment in the relief portion of the writ application.

On a consideration of the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No. 6753/2014 is, accordingly, disposed of.

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

The petitioner seeks quashing of the demand of Rs. 48,77,135/- made by the Excise Superintendent, Munger by letter dated 5.5.2014 on account of licence fee for the years 2012-13 and 2013-14, alleged to have been embezzled which has been subsequently reduced to Rs. 46,15,350/- by letter dated 28.7.2014.

The petitioner was a licensee of country made/foreign liquor and composite wine shop for the years 2012-13 and 2013-14 which was allotted in Group-9. An audit objection was made on 21.2.2014 by the Principal Accountant General, Audit, Bihar in which it was stated that during test check of demand collection register and challans along with other relevant records for the year 2013-14 (up-to 11/2013) of the office of the Superintendent of Excise, Munger, it was observed that some licence fee were not found in the treasury schedule under major head - ‘0039’-State Excise - and it was observed that one licence fee was found short in the Treasury schedule but as per challans and concerned Bank Scroll full licence fee was deposited and reason for licence fee not found/less shown in the treasury schedule and action taken in that regard was demanded. Thereafter further audit objection was made by letter dated 15.4.2014 in which it was observed that there were a lot of manipulations in the treasury schedule by changing the original deposited amount and also adding rows with fake T.C. No./Date and amount. By this manipulation the office tried to show actual deposit of huge amount of Excise Revenue and Government sustained a loss of Revenue of Rs. 7.57 crores and these types of acts and ignorance of supervision resulted in defalcation of Government Revenue which indicates that the Excise office has no means of ascertaining the area of malfunctioning in the system and also internal control mechanism of the office seems to be fully failure and the department was required to provide information regarding the reason of the said defalcation, action taken against the concerning person and what type of check measures had been adopted to ensure the deposit of Government revenue. The said observations were reiterated by the letter dated 7.7.2014 by the Office of the Principal Accountant General (Audit), Bihar revising the figure to Rs. 7.77 crores.

Pursuant to the audit objections internal inquiries were made; at the first of such inquiries it was found that a large number of excise licencee have shown much more deposit than what had really been deposited by Treasury Challans and in the case of the petitioner it was found that he had actually deposited only Rs. 400/- whereas the deposit was shown in the records to the extent of Rs. 2,88,000/-. A demand for the same on account of the said shortfall was made from the petitioner against which he deposited Rs. 2,87,600/- as demanded. Subsequently, however, on further inquiries into the matter of large scale fraud and forgery that had been committed in the matter of deposit of licence fees, it was detected that the petitioner was responsible for less deposit of Rs. 48,77,135/- for the two years in question and accordingly the demand was raised by letter dated 5.5.2014 of the Excise Superintendent, Munger. The said demand on further inquiries was reduced to Rs. 46,15,350/- by the letter dated 28.7.2014. Aggrieved by the aforesaid action of the respondents the petitioner has approached this Court.

Learned counsel for the petitioner has sought to rely upon the joint inspection report dated 1.7.2014 of the Deputy Commissioner of Excise, Bhagalpur-cum-Munger Division and Deputy Commissioner of Excise, Distillery and Warehousing, Bihar which, according to him, shows that the fault was of the Excise Head-clerk, Excise Inspector and the Superintendent of Excise and not of the petitioner but despite the same in the written report filed by the respondents with the Officer-in-charge of Kotwali Police Station, Munger in Kotwali P.S. Case No. 74/2014 it is only the petitioner and other Excise licensees who have been made accused.

It is contended by learned counsel for the petitioner that the entire amount of licence fee used to be handed over by the petitioner to the said Excise Head-clerk and it is the said Excise Head-clerk who had defalcated the amount and the petitioner cannot be held responsible for the same. It is however, admitted that the Excise Head-clerk, Munger had subsequently committed suicide.

It is emphatically submitted by learned counsel that as stated in the inspection report the petitioner is not responsible for defalcation rather allegations have been made against the Excise officials. It is also submitted that embezzlement has been made in the Treasury but the petitioner and other licensee are being made responsible for the said shortfall.

Learned counsel also submits that the respondents had made demand for payment of differences of the excise licence fee from time to time which had been deposited by the petitioner and thus it is not open to them to make any further demand.

Learned counsel for the State, on the other hand, submits that there is no provision under the Excise Manual by which such huge amount are to be handed over to the excise Head-clerk; rather the provision clearly required that the challans in question have to be merely initialed by the said Head-clerk or other responsible person of the office and thereafter the deposits are to be made in the Treasury.

It is submitted that there has been clear finding by the audit team of the Principal Accountant General, Audit as also on the basis of inquiries made by the officials of the Department that the copies of the Treasury Challans as in existence in the Treasury did not match with the treasury challans deposited in the Excise Office, Munger and further many of the Treasury Challans in the Excise Office did not have any corresponding existence in the Treasury office.

It is contended that the entire responsibility for making deposit is upon the licensees themselves and if any such defalcation has taken place it is the responsibility of the licensees to make good the shortfall. It is urged by learned counsel that there can hardly be any doubt that the petitioner and other licensees had been acting in collusion at the very least with the Excise Head-clerk and may be other officials of the Excise Superintendent's Office, Munger which fact is clearly borne out in the joint report dated 1.3.2014 but there is nothing in the said report which absolves the petitioner and other licensees from their acts of fraud and forgery rather the said report is specifically confined to the role of the Excise officials in the said fraud, forgery and manipulation which has resulted in huge loss to the Government.

Learned counsel further submits that the petitioner raised a claim regarding the amount being handed over to the Excise Head-clerk which is not at all the procedure prescribed in the Manual and no such statement can be accepted. If at all he had done so the same would only be at his own risk and considering the large scale manipulation, it is a clear cut case of collusion and conspiracy between the petitioner and at the very least the Excise Head-clerk and may be other officials of the said Department.

On a consideration of the aforesaid facts and circumstances, we are of the view that under the procedure prescribed by the instructions issued by the Board of Revenue under the Bihar and Orissa Excise Act, 1915, deposit of licence fee in the Treasury is the duty of the concerned licensee and the role of the

Excise Head-clerk/Accountant or an Excise Officer not below the rank of Sub-Inspector is only to attest the challans for making payment of such excise licence fees which has to be presented before them and after being satisfied of the correctness of the entries made therein or making necessary corrections to return the same to the presenter and thereafter the deposits are to be made by the licensees concerned and no role has been assigned to the officials and Head Clerks of the Excise Department for the payment of the fees in question and thus, it is not open to the petitioner to raise the plea that he had handed over the money to the Excise Head-clerk. If the petitioner had chosen to follow any procedure which is not borne out in the Excise Manual then he must bear the responsibility for the same.

In the present matter considering the large scale manipulation made in the Excise Superintendent's office at Munger, it is difficult, prima facie, to accept that the petitioner had no role to play in the matter of such large scale forgery and manipulations.

Thus, we find no merit in the present writ application. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

S.Pandey/-

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