

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case Nos.5861 of 2015

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Jai Praksh Prasad son of Late Gupteshwar Prasad resident of village- Natwarkala,
P.O + P.S.- Natwar, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Excise and Control, Bihar, Patna.
2. The Secretary, Excise and Prohibition Department, Bihar, Patna.
3. The Assistant Excise Commissioner, Rohtas, Sasaram.
4. The District Magistrate, Rohtas, Sasaram

.... Respondent/s

with

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Civil Writ Jurisdiction Case Nos. 6102 of 2015

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Laddu Chand Sah. Son of Late Mona Sah. Resident of Gorari, P.S.- Karakat,
District - Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Secretary cum Excise Commissioner, Bihar, Patna.
3. The Collector, Rohtas.
4. The Assistant Commissioner of Excise, Rohtas.
5. Jai Prakash Prasad. Son of Late Gupteshwar Prasad. Resident of village - Natwarkala, P.O. & P.S.- Natwar, District - Rohtas.

.... Respondent/s

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Appearance :

(In CWJC Nos.5861 of 2015)

**For the Petitioner/s : Mr. Mrigank Mauli
Mr. Sameer Kumar
Mr. Sanket**

For the State : Mr. Lalit Kishore- PAAG

(In CWJC Nos.6102 of 2015)

For the Petitioner/s : Mr. Satyabir Bharti

For the State : Mr. Lalit Kishore- 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: 30-06-2015

Heard learned counsels for the petitioners in both the writ applications and learned counsel for the State.

Both the writ applications relate to the settlement of liquor shops of Group No. 63 and accordingly they were directed to be heard together.

The petitioner of CWJC Nos. 5861/2015, Jai Prakash Prasad was at Sl. Nos. 1 after the draw of lots for liquor shop of Group Nos. 63 and the petitioner of CWJC Nos. 6102/2012, namely, Laddu Chand Sah was at Sl. Nos. 2 after the draw of lots. The petitioner, Jai Prakash Prasad, who is also respondent Nos. 5 in the other writ petition, being the sole applicant for shops of Group No. 75 in Rohtas district was thus automatically the successful candidate for the said group but since he refused to take the settlement of the said excise shops, the security money of Rs. 10,65,000/- which he had deposited for Group No. 63 shops was forfeited by the authorities. The petitioner Laddu Chand Sah thereafter filed CWJC Nos. 6102/2015 with the prayer to cancel the settlement made in favour of the respondent Nos. 5, Jai Prakash Sah with respect to shops of Group No. 63 and to grant settlement in favour of the petitioner with respect to the said shops. During the pendency of the

writ application the shops of Group No. 63 have been settled with the petitioner and no issue remains between the petitioner and the State-authorities.

In view of the various orders passed by the State-authorities, Mr. Satyabir Bharti, learned counsel for the petitioner seeks permission to withdraw the writ application.

CWJC Nos. 6102 of 2015 is, accordingly, dismissed as withdrawn.

So far as the petitioner of CWJC Nos. 5861/2015 is concerned, the facts are not in dispute that he had applied for liquor shop of Group No. 75 and Group No. 63. He was successful as the first candidate after the draw of lots earlier on 19.3.2015. It is the stand of the petitioner that on the day of settlement, being the successful candidate, he deposited advance security money and licence fee, which together would come to about Rs. 25 lacs, to the tune of Rs. 10,65,000/-. It is his further case that he did not intend to take settlement of the shops of Group No. 75 and therefore he had not signed settlement register for the same. The respondent-authorities insisted upon the petitioner to deposit the security deposit and advance licence fee for the shops of Group No. 75 also which together would come to about Rs. 44 lacs, but since he had never accepted the settlement of Group No. 75 shops, hence, he refused to

deposit the same.

On the refusal of the petitioner to deposit the amount with respect to Group No. 75 shops and readiness to deposit only with respect to Group No. 63 shops, the authorities by letter dated 10.4.2015 gave him an ultimatum to accept settlement of shops of both the Groups otherwise the security deposit and the licence fee amount shall be forfeited. Upon failure of the petitioner to do so, the authorities cancelled the settlement of both the groups of shops and forfeited the deposits made by the petitioner.

Although earlier the stand of the petitioner, as taken in the writ petition, was that he being the single candidate of Group No. 75 there could not have been any lottery and thus there was no settlement in his favour, but by filing a rejoinder to the counter affidavit, the stand taken by the petitioner is that at the time of draw of lottery of Group No. 75 shops when the petitioner was declared successful candidate for the sole reason that he was the only bidder in Group 75 shops, the petitioner had refused to sign the register and deposit security money and fees and thus his clear intention was only to participate with regard to Group 63 shops and not for Group 75 shops, and after he had not signed the register for the settlement of Group 75 shops, the petitioner acquired disqualification under Section 12(2) of the Bihar Excise (Settlement of Licences for Retail

Sale of Country/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007 and thus if the petitioner was declared disqualified under the provisions of the Rules, then allowing him to take part in the settlement of Group 63 shops itself is bad in law.

It is urged by learned counsel that it is clear from the deposit receipt issued to the petitioner also that the deposits have been made only against Group No. 63 shops and thus if the petitioner was a disqualified candidate on account of not taking settlement of Group No. 75 shops then no such deposit could have been taken from the petitioner with regard to Group No. 63 shops and thus both the act of deposit and forfeiture would be contrary to the Rules.

Learned counsel for the State, on the other hand, submits that under Rule 12 of the Rules, after the applications have been filed, a list of eligible applicants who have applied in prescribed application form is prepared and a shop-wise list is prepared and published by the licensing authority in terms of Clause 11 of the sale notification two days before the draw of lots, which has been done in the present matter also. It is submitted that the petitioner was thus put to notice at least two days before the date of settlement that he was the sole candidate for the settlement of Group 75 shops but despite the same he did not file any application before the respondent-



authorities stating that he did not wish to take settlement of the shops of Group No. 75 which would have had the effect of debarring him from participating in the settlement process. Rather in a cunning manner he did not sign the settlement register of Group No. 75 shops and went ahead to take a chance to get settlement with regard to Group No. 63 shops but, having succeeded in the settlement of shops of Group No. 63, has sought wriggle out of taking settlement of Group No. 75 shops for reasons best known to him and thus the provisions of Rules 15 and 16 of the Rules with regard to any payment of security and advance licence fee would be clearly attracted in the case of the petitioner and the forfeiture of the amount of Rs. 10,65,000/- would thus take effect by operation of the said Rules.

We have considered the submissions of learned counsels for the parties as also the materials on the record. From a perusal of the 2007 Rules it is evident that the settlement is to be made through draw of lots of each Group of shops and where the number of applicants is more than three then in serial order a list of candidates is to be prepared for three successive draw of lots. In case the number of applications is less than three then draw of lot is made between the available candidates. Although the rules do not specifically provide for a case where there is a sole applicant, but it is



evident from a consideration of the provisions of Rule 12 that in such case there can be no question of any draw of lot and evidently the settlement would be made with the sole candidate and the other provisions of the Rules, in case the applicant backs out from the settlement, will be applicable only to the extent that he would be disqualified from the settlement of any shop in the State and not that settlement will be made with the 2nd or 3rd candidates. This can be the only reasonable interpretation of the Rules as they exist.

Sub-Rule (3) of Rule 12 further provides that the settlement of shop shall be started from the shop for which the least number of applications have been received. In such circumstances, it is evident that where there was only one applicant, the shop would be immediately considered as settled with the said candidate. As a matter of fact, the same would be known when the shop-wise list of candidates is prepared and published two days prior to settlement; it would be known to the whole world including the applicant that he being the sole applicant, the shop in question stands settled with him, as there can be no question of any further draw of lots in such cases. The petitioner was thus put to notice prior to the settlement with regard to settlement of shops of Group No. 75 with him but admittedly he did not file any application with the authorities stating that he was not prepared to accept the settlement of the shop. Had he



done so prior to the date of settlement then he would be disqualified from even entering the place of settlement since he would be debarred from participating in the draw of lots of any other Group. Thus, this Court is unable to accept the contention of learned counsel for the petitioner that by the mere fact of the petitioner not having signed the settlement register, he stood disqualified and could not have been allowed to participate in the settlement process. In fact, the petitioner's keeping himself silent in the matter has created a situation where he has prevented the selection of three genuine candidates for the shops in question with respect to which there were as many as 59 applicants.

In the present matter the candidate at Sl. Nos. 2 has accepted the settlement but the very purpose of having 3rd candidate for shop ensured that on failure or removal of 1st and 2nd, candidate there would be a 3rd candidate available for settlement. The petitioner thus by his action has jeopardized the settlement process in terms of the Rules and he cannot be permitted to take any benefit in terms of the presumption that he being disqualified not having taken settlement of shop of Group No. 75 he could not have been participant in Group No. 63 and any deposit made by him cannot be forfeited.

We are thus of the view that the question of not

having signed the register with regard to Group 75 shops and further that he having been issued receipts specifically for the deposit of security money and advance licence fee only with respect to Group No. 63 shops and not Group No. 75, cannot be of any favourable consequence to the petitioner as he was obliged to take settlement of shops of both the Groups or suffer forfeiture of any deposit by way of security or advance licence fee in terms of Rules 15 and 16 of the Rules apart from cancellation of the settlement with him and it being settled with the 2nd candidate in the draw of lots. That is exactly what has been done by the respondents and this Court does not see any infirmity in their action in the given facts and circumstances of the case.

The writ application is, thus devoid of merit. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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