IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3225 of 2016

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1. M/s M. J. & Sons Distillery & Breweries Pvt. Ltd., a Company incorporated under the Provisions of the Companies Act, 1956 having its Corporate office at Janki Villa, 23 - A Basant Vihar Colony, Boring Road, P.S. S.K. Puri, District - Patna and Distillery at Village - Raghunathpur, P.S. Amarpur, District - Banka through its Director Shri Shiv Kumar Bhagat Son of Late Madhusudan Bhagat resident of Janki Villa, 23 - A Basant Vihar Colony, Boring Road, P.S. S.K. Puri, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
2. Shri K.K. Pathak Son of not Known to the Petitioner, Presently Posted as the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
3. The Excise Commissioner, Bihar, Patna
4. The Collector, Banka
5. Shri Nilesh Devre, Presently Posted as the Collector, Banka
6. The Superintendent of Excise, Banka
7. The Deputy Commissioner, Commercial Tax, Bhagalpur Circle, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti

For the Respondent/s : Mr. Lalit Kishore (PAAG)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V. JUDGEMENT
(Date: 18-03-2016
Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

The present writ application seeks annulment and quashing of the order dated 30.01.2016, passed by the Collector, Banka, who according to the petitioner, in *mala fide* and in colourable exercise of powers, has suspended the distillery license of the petitioner issued to him and also restrained him from manufacturing denatured spirit in pursuance of licenses issued in Form -28A and Form 25 prescribed under the Bihar Excise Act. The petitioner has prayed for quashing of the impugned order and a further direction to the respondents to unseal the manufacturing premises of the petitioner.

The present litigation came into existence after the petitioner failed to appear, in a meeting, convened by the Principal Secretary, Excise and Prohibition Department Bihar. The said meeting was convened on 18.01.2016 at 3.30 P.M. and was to be attended by distillers of the State to discuss the prohibition of liquor in the State. The petitioner could not attend the said meeting on account of some unforeseen circumstances, which, according to the petitioner, made the petitioner incur the wrath of the respondent No. 2, Principal Secretary, Excise and Prohibition Department.

On the failure of the petitioner to attend the meeting, respondent No. 2, misusing his official capacity, directed the Collector, Banka, to seal the distillery. The Collector, Banka, acting upon the dictates of his superior, deputed his officers, namely, his OSD and Superintendent of Excise, to seal the premises in compliance of the aforementioned order. The said action was resisted by petitioner distillery as the officers, who had come to seal the distillery, were not in possession of any order by the competent authority. As such, the Collector, Banka, who was bound by the dictate of his superior, directed his officers to inspect the distillery and prepare an adverse report.

At the same time, authorities of the Commercial Tax Department were directed to report on the outstanding demand of the Commercial Tax against petitioner. In compliance thereof, the Deputy Commissioner, Commercial Tax, Bhagalpur, raised a demand against the petitioner for the period from 2010-11 to 2015-16. A report was sent to the Collector further without initiating any proceedings for ascertainment of the demand showing outstanding amount to the tune of Rs. 30,83,140 along with the interest on delayed payments and a penalty of Rs. 1,02,750/- and the admitted tax of Rs. 14, 11, 593/- totaling to Rs. 45,97,483/-. It appears that from the letter of the Commissioner, Commercial Tax, Bhagalpur Anchal, that the aforesaid demand was sent to the Collector on a communication made between them on 28.01.2016.

Soon thereafter, on 29.01.2016, the authorities of the Excise Department, headed by the Superintendent of the Excise,, Banka, inspected the factory premises and prepared a report, which was, however, not furnished to the petitioner. Though the Superintendent of Excise, Banka, is also the incharge of the petitioner distillery and all transactions are conducted under his direct supervision, the petitioner was shocked and amazed to receive the order, dated 30.01.2016, on 01.02.2016, whereby the Collector,, Banka, upon suspending the distillery license, directed the petitioner to submit his explanation to the allegations set forth in the aforesaid suspension order. The aforementioned letter was issued under the provisions of section 42(b),(c) and h(i) of Bihar Excise Act, 1915, alleging violation thereof and suspending, with immediate effect, the license issued to the petitioner under Form 25 and Form 28-A. It is interesting to note that on the said date i.e. 30.01.2016, the Collector Banka, vide letter No. 69/Excise, wrote to the Secretary Excise and Prohibition Department Bihar, Patna, seeking further guidelines for proceeding in the matter.

It is submitted, on behalf of the petitioner, that the act of the Collector, Banka, in placing the petitioner's distillery and his license under suspension is wholly illegal and arbitrary as the primary ground on which the license was suspended was non payment of outstanding dues to the Commercial Tax Department. From the letter, dated 28.01.2016, it would appear that the demand was created against the petitioner only on 30.01.2016. As per provisions of Section 39 of the Act, which stipulates that any demand, created under the Act, cannot be realized before 30 days from the date of issuance of demand notice, the said action against the petitioner could be taken only after 29.02.2016 and not prior thereto. It is further submitted by learned counsel for the petitioner that the license of the petitioner had been issued only after a tax clearance certificate was issued, on 15.09.2015, by the Deputy Commissioner Commercial Taxes, Bhagalpur Circle, in which a sum of Rs. 11,37,423.00 was shown due against the petitioner as interest for the year, 2014-15, which was disputed by the petitioner. The fallacy of the demand is also evident from the fact that though by the letter, dated 28.01.2016, reference was made to the dues for the year from 2010-11 to 2015-16, no such demand was ever raised, while issuing a clearance certificate on 15.09.2015.

The other ground sought to have been used by the Collector for suspending the petitioner's license is that the petitioner had been using 1.42 acres of land, which was under dispute. It is relevant to mention here that the dispute, with regard to the portion of land, was brought to the notice of this Court in C.W.J.C. No. 829 of 2015 and this Court, on 09-06-2015, had clearly stated that the merely on the ground that small part of the land within the precincts of the distillery was recorded 120 years back as Gairmajarua Aam, the renewal of the distillery license of the petitioner could not be withheld, especially, as the renewal of the distillery license was granted notwithstanding the aforesaid fact earlier. The matter had also travelled to the Apex Court and the S.L.P., filed by the State, was dismissed. Thus, the observations of the Court that mere dispute, with regard to the small portion of land, would not be a consideration for refusal to renew distillery license, would hold good in the present context and suspension of the license, on the aforestated ground, is in the teeth of the order passed by this Court on earlier occasion.

All these facts were brought to the notice of the respondents by the petitioner's reply to the show cause, dated 04.02.2016, wherein it was contended that the allegations of violation of the provisions of Bihar Excise Act, 1915, and conditions of licence were *ex facie* frivolous and unsustainable and that the petitioner distillery had not violated the terms and conditions of the license so as to incur the drastic measure of suspension of license.

Learned counsel for the petitioner further contended that the Collector, Banka, being the statutory authority under the Bihar Excise Act, and vested with the power as licensing authority, clearly abdicated his statutory duties by referring the show cause filed by the petitioner to the Secretary Excise (respondent no. 2) for appropriate direction vide letter No. 98, dated 08.02.2016 (Annexure -13). Learned counsel for the petitioner contended that the Collector, being the Statutory authority, could neither abdicate his powers in favour of the Secretary, Excise, nor could the Secretary usurp the same in contravention of the statutory provisions. Such an action would go to indicate that there was no independent exercise of mind and the respondents' action was in violation of the statutory rules.

We have heard Mr. Satyabir Bharti, learned counsel for the petitioner, and Shri Lalit Kishore, Principal Additional Advocate General for the State. The grounds raised by the petitioner for setting aside the impugned order, dated 30.01.2016, have been clearly explained by him. A reference to the provisions of Section 42 clearly shows that it was the Collector alone, who could proceed to pass orders under the relevant provision and the manner of proceeding under the same has also been explicitly stated, which is quoted hereunder for ready reference.

> "42. Power to cancel or suspend license, permit or pass - (1) Subject to such restrictions as the State Government may prescribe the authority who granted any license, permit or pass under this Act may cancel or suspend it -
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> (a) if it is transferred or sublet by the holder thereof without the permissions of the said authority; or
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> (b) if any duty or fee payable by the holder thereof be not duly paid; or
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> (c) in the event of any breach by the holder thereof, or by any of his servants, or by anyone acting on his behalf with his express or implied permission of any of the terms or conditions thereof; or
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> (d) if the holder thereof is convicted of any offence punishable to revenue under this Act or any other law for the time being in force relating to revenue, or of

any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drug Act, 1930 (2 of 1930) or under the Merchandise Marks Act, 1889 (4 of 1889), or under other section which has been introduced into the Indian Penal Code by section 3 of that Act: or

(e) if the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878 (8 of 1878); or

(f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22 – on the requisition in writing of such holder; or

(g) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (c) of the sub-section (1), the authority aforesaid may cancel any other license, permit or pass granted to such person by, or by the authority of the State Government under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878 (1 of 1878)

[(3) When a license, permit or pass is liable to be cancelled, it may, at the discretion of the authority who granted the same, be suspended for a period of ninety days at a time, provided the authority concerned may extend the period of suspension beyond ninety days under exceptional circumstances, after recording reasons for the same.]

(4) The holder of a license, permit or pass shall not be

> entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof."

It is, thus, evident that the Collector, in seeking further advice from the Secretary of the Excise Department, has abdicated his duties and in forwarding the show cause reply, filed by the petitioner to the Secretary, has failed to perform the Statutory duties cast upon him.

Further-more, the act of the Excise Commissioners, by issuing notice, dated 15.02.2016, directing the petitioner to show cause on the allegation made by the Collector, Banka, and the notice dated 30.01.2016, the aforementioned Excise Commissioner has clearly usurped the power not vested in him and has called upon the petitioner to furnish the further reply even though the reply, dated 04.02.2016, had already been forwarded to him by Collector, Banka. It appears that the respondents, particularly, the Commissioner Excise and the Collector, Banka, have acted in contravention of the statutory provisions and such action is wholly untenable in law and cannot be sustained by this Court. Accordingly, upon noticing such irregularities, the aforementioned notices contained in annexure 8 and 14 are hereby quashed and the impugned order having been set aside, it would be only in the interest of justice that the Collector, Banka, take immediate steps to reopen the distillery of the petitioner after withdrawing the suspension order forthwith so that the petitioner may not suffer any further loss.

With the aforementioned direction and observation, this writ application stands allowed with cost of Rs. 50,000/-.

(Anjana Mishra, J)

I. A. Ansari, ACJ

(I. A. Ansari, ACJ)

Sunil/ NAFR

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