IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.368 of 2016
IN
Civil Writ Jurisdiction Case No. 20706 of 2014

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M/s Rawati International Pvt. Ltd., Biscomaun Colony, P.S. Alamganj Town, District Patna through its Director Jitednra Prasad Singh, son of Late Ram Pratap Singh, Dharhara Kothi, P.S. Saidpur, District Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Joint Commissioner, Excise, Bihar, Patna
4. The Superintendent of Excise, West Champaran, Bettiah
5. The Collector, West Champaran, Bettiah
6. The Bihar State Beverage Corporation Limited, Vidut Bhawan, Bailey Road, Patna

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Adv.
Mr. Harsh Singh, Advocate

For the Opposite Parties : Mr. Lalit Kishore, PAAG I
Mr. Vikash Kumar
Mr. Girijesh Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)
Date: 02-09-2016

The petitioner seeks review of the judgment and order, dated 23.06.2016, passed in CWJC No. 20706 of 2014 (M/s Rawati International Pvt. Ltd. v. The State of Bihar and Others), mainly on the ground that the said judgment and order has been passed without considering the complete statutory provisions, viz., Section 69 of the Bihar Excise Act, 1916 (hereinafter referred to as the 'Act') in its totality and Rule 26 of the Bihar Country Liquor Bottling Rules, 2004 (hereinafter referred to as 'the 2004 Rules'). It is also the contention of the petitioner that this Court failed to deal with the submissions categorically made in the written submissions filed in this regard, which has resulted in injustice being perpetuated.

2. We have heard Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the petitioner, and Mr. Lalit Kishore, learned Principal Additional Advocate General No. 1, for the State of Bihar.

3. Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the petitioner, at the very outset, has drawn our attention to paragraph 25 of the judgment and order under review, which contains discussion and interpretation of Section 69 of the Act. He has submitted that the conclusion arrived at by this Court in the judgment and order under review to the effect that Section 69 of the Act does not cover the depots of Bihar State Beverage Corporation Limited (hereinafter referred to as the 'BSBCL') and, therefore, the said provisions of the Act have no application to the matter of collection of samples from the stock of BSBCL, is erroneous on the face of it.

4. Mr. Singh has submitted that BSBCL comes within the purview of Section 69 (ii) of the Act and, therefore, only those persons, empowered under Section 69 of the Act, are empowered to cause inspection of the *intoxicants* kept in the depots of the BSBCL.

5. Mr. Lalit Kishore, learned Principal Additional Advocate General No. 1, appearing on behalf of the State of Bihar, on the other hand, has contended that a depot of BSBCL is not used for "*sale*" of intoxicants and, therefore, it has been rightly held that depot of BSBCL do not come within the purview of Section 69 of the Act.

6. This is to be briefly noted that the petitioner is a company, which was granted exclusive privilege for manufacturing and supplying country liquor to BSBCL for the period 01.07.2009 to 31.03.2012, which was, subsequently, extended. In terms of the conditions of license, the petitioner was the sole company authorized to manufacture country liquor of the prescribed standard in the manner prescribed under the conditions of license and supply the same to the BSBCL in the district of West Champaran. Certain samples of sachet, containing country liquor supplied by the petitioner to the BSBCL, kept in the depot, were sent to Excise Chemical Examiner for examination, who, in turn, had submitted his report to the effect that samples of sachets were of sub-standard quality.

7. Without mentioning further facts in the present judgment and order under review, which have already been discussed in the judgment and order under review, suffice it to say that the petitioner was directed to deposit a sum of Rs. 2,40,55,236/- and a penalty of equivalent amount, i.e., Rs. 2,40,55,236/-, by the authorities under the Excise Act. The orders directing payment of compensation amount and penalty were put to challenge through a application filed under Article 226 of the Constitution of India, which had given rise to CWJC No. 20706 of 2014.

8. By the judgment and order under review, the said writ application has been partly allowed with the following observations and directions:

> ***"35.*** *In my opinion, after having found the infirmity to the effect that the order of the original authority, i.e., the Collector, West Champaran, Bettiah, dated 02.05.2013, did not disclose the basis for calculation of the quantum of revenue loss, he ought to have satisfy the order of the Collector and remanded the matter back to him for passing an order afresh. That having not been done, we intend to interfere with the order, dated 20.02.2014, passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, and the order of the Collector, dated 02.05.2013, for this limited purpose.*
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> ***36.*** *Accordingly, the impugned order, dated 02.05.2013, passed by the Collector, West Champaran, Bettiah*

(Annexure-2), and the order, dated 20.02.2014, passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, in case No.24 of 2013, are quashed for the said limited purpose.

37. *The matter is remanded back to the Collector, West Champaran, Bettiah, to pass an order afresh on the point of calculation of quantum of revenue loss caused to the State exchequer/BSBCL after giving the petitioner-company an opportunity of being heard. Such order must be passed within a period of two months from today. It will, however, be open to the petitioner-company to question the correctness of the order in compliance of the present, before appropriate forum, in accordance with law.*

38. *This application is, thus, partly allowed."*

9. It is the plea on behalf of the petitioner that interpretation of Section 69 of the Act, as given in paragraph 25 of the judgment and order under review, is apparently erroneous, which is going to seriously prejudice the petitioner's case and cause miscarriage of justice and, therefore, the same needs to be reviewed.

10. Mr. Jitendra Singh, learned Senior Counsel, has placed strong reliance on the Supreme Court's decisions, in the cases of **M/s Thungabhadra Industries Ltd. v. The**

Government of Andhra Pradesh (AIR 1964 SC 1372) and **S. Thilagavathy v. State of Tamil Nadu and Others**, reported in **(2011) 6 SCC 365**.

11. From the submissions advanced on behalf of the petitioner, it has appeared to us that the plea that there is error apparent in interpretation of Section 69 of the Act is based on the premise that BSBCL is also a licensee and, therefore, its premises come within the ambit of Section 69 (ii) of the Act.

12. We are not inclined to accept the submission that there is any error in the interpretation of Section 69 of the Act warranting review of the judgment and order. We have noticed, while interpreting Section 69 of the Act, that the said provisions apply to two kinds of places, including the place, where intoxicants were '*kept for sale*'. Learned Senior Counsel appearing, on behalf of the petitioner, has tried to impress upon us that the said intoxicants were kept for sale in the depot of the BSBCL, which is not convincing to us.

13. Reliance placed by Mr. Singh, learned Senior Counsel, on Supreme Court's decision in the case of **M/s Thungabhadra Industries Ltd.** (supra), is of no avail as it does not support Mr. Singh's contention. The Supreme Court has held, in paragraph 11 of **M/s Thungabhadra Industries Ltd.** (supra), that a review is by no means an appeal in disguise, whereby an erroneous decision is re-heard and corrected, but the same lies only for patent error. We have failed to notice any error, let alone patent error, in our interpretation of Section 69 of the Act in the judgment and order under review.

14. Mr. Singh, learned Senior Counsel, has also submitted that since this Court has not referred to Rule 26 of 2004 Rules in the judgment and order under review, though the same was relied on and mentioned in the written notes of argument, the said judgment and order need to be reviewed.

15. The submission is fit to be rejected in view of our interpretation of Section 69 of the Act as has been given in the judgment and order under review. The said Rule deals with '*inspection of retail country liquor shops*'; whereas, in the present case, samples were taken from the depot of the BSBCL, which is certainly not a *retail outlet of country liquor*. Section 26 of 2004 Rules has no application at all and no reference of the said provisions, in the judgment and order under review, in any manner, would have any effect on the findings, conclusion and the final order passed by us.

16. It has lastly been submitted that samples were collected behind the back of the petitioner from the BSBCL depot, which were sent for chemical examination. According to him, this amounts to breach of the principles of natural justice, which aspect has not been taken into account in the judgment and order under review. We have not disturbed the finding recorded by the authorities under the Act that the samples collected and sent for chemical examination were supplied by the petitioner. The petitioner holds the absolute privilege of manufacturing and supply of country liquor to BSBCL. There is no place of *mala fide* against the officials, who had collected the samples. In such circumstances, we do not find any merit in the plea of alleged violation of principal of natural justice.

17. We see no merit in this review application. It is accordingly dismissed.

18. We need to mention that while perusing the judgment and order under review, we have noticed that there is a typographical error in paragraph 35, at page 31, inasmuch as in place of "set aside", "satisfy" has been typed.

19. The said part of the order stands corrected accordingly.

(I. A. Ansari, CJ.)

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.09.2016
Transmission Date	N.A.