

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14763 of 2016

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1. Pradeep Kumar Singh Son of Sh. Indradeo Singh Resident of Maszidwa Tola,
Banuchhapar, Police Station- Bettiah Mufassil, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Excise and Prohibition,
Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, West Champaran, Bettiah.
4. The District Certificate Officer, West Champaran, Bettiah.
5. The Superintendent of Excise, West Champaran, Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar
Mr. Manoj Kumar

For the Respondent/s : Mr. Anshuman Singh AC to- PAAG 1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-01-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order dated 26.9.2016 passed in Certificate Case No.16 of 2015-16 whereby the Collector under the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as the Act) directed the petitioner do deposit Rs.30,66,000/- by way of licence fee which the petitioner was required to deposit and he has failed to do the same.

It is undisputed fact that in auction there was settlement of Group No.19 shops having a monthly licence fee of



Rs.10,05,000/- with a condition that petitioner would be supplied the fixed monthly quota for the purposes of sale. As has been submitted by the petitioner that he was not supplied the minimum monthly quota for the period 2014-2015 as such claim of State is not sustainable. In such circumstances the petitioner is not obliged to deposit monthly licence fee of Rs.10,05,000/- per month but further submits that instead of non-supply of the quota all through petitioner has deposited the licence fee till November, 2014 and there was due of one month i.e. December, 2014 which has already been adjusted by the Excise Department against the advance deposit and submits that there is no outstanding dues against the petitioner.

From the record it appears that first requisition was made by the Excise Department vide letter no. 90 dated 28.11.2015 whereby on the same letter thereafter a case was registered as Case No.16 of 2015-16 for realization of Rs.30,66,000/- and demand of Rs.10,05,000/- was placed for realization of the same which was registered as Case No.11 of 2016-17 but later on second proceeding was dropped on account of overlapping and ultimately notice was issued to the petitioner for filing objection. In pursuance thereof petitioner filed objection and placed all grievances and submits that there is no outstanding



dues against the petitioner as all licence fee for entire period has been deposited in the State exchequer. Even though the minimum amount of monthly quota of liquor which was required to be supplied which the State has failed to supply. But the Collector under the Act has passed the order recording therein that petitioner has only given oral assurance and never deposited the amount and after adjustment of Rs.10,05,000/- of advance money made demand of Rs.30,66,000/- has been made.

Learned counsel for the petitioner submits that they have committed illegality making demand in view of the fact that they have never supplied minimum monthly quota of liquor inasmuch as they have already paid the entire licence fee except for one month which has been adjusted against the advance money which was lying with the State. He further submits that during the proceeding the Excise Department itself has filed its reply where plea of petitioner has been accepted, all outstanding dues except for one month has been deposited and one month licence fee has been adjusted against the advance licence fee lying with the State. In such view of the matter, all payment has been made by the petitioner.

Learned counsel for the State submits that petitioner has



not deposited the amount which is apparently clear from the order of the Collector and oral assurance was given inasmuch as there is provision for appeal which the petitioner has not availed and question which has been raised by the petitioner is question of fact can be looked into by the appellate authority and cannot be looked into in the present proceeding.

This Court is not giving any opinion on the merit of the case. There is provision for appeal under the Act. Section 60 of the Act provides that appeal should be filed within 15 days and 30 days before the Commissioner and as such instead of availing the forum of appeal the petitioner has challenged the demand amount in the present proceeding. As there is provision for appeal, the submission which has been raised by the petitioner, can easily be looked into by the appellate authority as has been claimed by the petitioner that petitioner has already deposited the entire licence fee, there is no outstanding dues which can be verified by calling the record. Appellate authority will call for the relevant record and examine the same, petitioner is given liberty to raise all points available in law. Section 60 of the Act provides no appeal is maintainable without deposit of 40% of award amount.

Looking to the facts and circumstances as 40% of



Rs.30,66,000/- comes to Rs.12,00,000/- and odd this Court directs the petitioner to deposit Rs.10,00,000/-. If the petitioner deposits Rs.10,00,000/- along with memo of appeal the appellate authority will consider the case of the petitioner verifying the record and pass the order in accordance with law. This Court gives moratorium of 60 days with respect to arrest of petitioner. If he fails to obtain suitable order from the appellate court the State authorities will be at liberty to take action in accordance with law.

It the appeal is filed within the aforesaid time the appellate authority will pass the order within a period of six months from the date of filing of the appeal.

With the aforesaid observation and direction this writ petition is disposed of.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.1.2017
Transmission Date	NA

