IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3649 of 2016
In
Civil Writ Jurisdiction Case No.7634 of 2016

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 village, 23-A Basant Vihar Colony, Boring Road, PS S.K. Puri, District Patna and Distillery at Village- Raghunathpur, PS 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, PS S.K. Puri, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Shri Amir Subhani, son of not known to the petitioner, Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
3. Shri Aditya Kumar Das, son of not known to the petitioner, currently posted as The Excise Commissioner, Excise and Prohibition, Government of Bihar, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
		Mr. Alok Chandra, Advocate
		Mrs. Aparna Arun, Advocate
For the Respondents	:	Mr. Lalit Kishore, Advocate General
		Mr. Anshuman Singh, AC to AG

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

6 06-10-2017 Heard learned counsel for the parties.

The Commissioner, Excise, Government of Bihar, has appeared in person. A supplementary show cause has been filed. Instead of making things simple and upfront by renewing the license to manufacture industrial alcohol a via media has been adopted and a detailed order as contained in Memo No.2801 dated 20.09.2017 has been passed by Commissioner, Excise, Government of Bihar, which has been enclosed as Annexure-'A' to the supplementary show cause filed on behalf of Opposite Party Nos. 2 and 3. Learned Advocate General, on instructions from the Commissioner, Excise, has taken a stand that the order (Annexure-'A') is to be treated as renewal or permission for production of industrial alcohol i.e. ENA with conditions mentioned therein.

No doubt, the State of Bihar had been given liberty as well as power to regulate the sale, transportation etc. of the industrial alcohol by laying down a regulation to ensure that the industrial alcohol for which the petitioner company has license to manufacture by virtue of the Full Bench decision in the case of ***Bihar Distillers & Bottlers Pvt. Ltd. vs. The State of Bihar and Others***, reported in 2017(2) PLJR 818, is not misused, on which the petitioner cannot really raise an objection.

But counsel for the petitioner has rightly pointed out that some of the conditions which have been talked about in the order dated 20th September, 2017 is again a case of overreach by the State of Bihar because the petitioner would be made vicariously liable for action of any person who may utilise the manufactured spirit by the petitioner company, which is ENA, for nonindustrial purpose even if it is outside the State of Bihar.

Since the prohibition law is effective and enforceable within the jurisdiction of the State of Bihar and has no extra territorial operation, therefore, the State of Bihar can make a person answerable only within the territorial jurisdiction of the State of Bihar with regard to enforcement of the law. Once the raw material, i.e. the ENA, is sold by the present petitioner or the manufacturer or a purchaser outside the State of Bihar and he utilizes it in any manner which is permissible in that State or territory, then the State of Bihar in the garb of control cannot control the said conversion or use of ENA in any other manner besides industrial use by fixing responsibility upon the petitioner, i.e. the manufacturer.

It is the categorical stand of the Commissioner, Excise, Government of Bihar, that no separate license is required to be issued by them, the order passed by him dated 20th September, 2017, should be treated as permission to start manufacture of ENA and ENA alone.

It is made clear that the petitioner will be answerable for any misuse of its product i.e. ENA for potable purposes within the territory of State of Bihar, but any condition which in any manner vicariously puts responsibility upon them for a conduct of any person who is not amenable to the jurisdiction of State of Bihar is of no consequence so far as any liability or criminality is concerned upon the petitioner, i.e. the manufacturer of ENA.

Contempt application stands disposed off. If the petitioner is aggrieved by some of the clauses of the order dated 20th September, 2017, they are free to assail the same before any forum.

Contempt application stands disposed of in terms of the above.

The personal appearance of the Principal Secretary, Excise, is exempted and that of the Commissioner, Excise, stands dispensed with.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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