IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16225 of 2016

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Rajesh Kumar son of late Bhagwat Prasad resident of Village - Nateshar, P.O. - Jharana Saren, P.S. - Neemchak Bhathani, District - Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Commissioner, Excise, Bihar, Patna.
4. The Assistant Commissioner, Gaya.
5. The Superintendent of Excise, Gaya.
6. The Collector, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kunwar Narayan Jamuar, Advocate
For the Respondent/s : Mr. Bishwa Bibhuti Kumar Singh, A.C. to A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-08-2018

1. Admit.

2. In the facts and circumstances of the case and with the consent of learned counsel for the respective parties, the present petition is taken up today for final hearing as the pleadings are complete.

3. By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ/writs or order/orders directing the respondents to immediately refund the security money of Rs. 1,69,770/- which was deposited and equal amount of advance licence fee, in respect of composite

liquor shop No.01, group No. 57 in the year 2013-14 in the Gaya district.

3.1 It is the case of the petitioner that the aforesaid amount was deposited by the petitioner at the time of issuance of licence in the year 2013-14, which is required to be refunded after completion of financial year. It is the case of the petitioner that despite number of reminders, the respondent authorities have not refunded the amount and hence, the present petition.

4. A counter is filed on behalf of the Respondent nos. 4 and 6. It is stated that so far as the advance licence fee is concerned, the same was adjusted in the month of March, 2014 as per the provisions contained in condition No. 15(ga) of the relevant sale notification. It is further stated that at the end of the period of licence, the security money is required to be refunded to the concerned licensee after proper verification of deduction of the dues, if any. It is stated that the security money is not refundable to the licensee whose work during the concerned period of licence was found unsatisfactory. It is stated that, therefore, security money is required to be refunded to those licensee only whose work has been found satisfactory. It is stated that in the instant case, the petitioner failed to lift the prescribed annual Minimum Guaranteed Quota (M.G.Q.) liquor of the excise shop licensed to

him during the concerned period 2013-14. It is stated that the petitioner defaulted in lifting annual Minimum Guaranteed Quota (M.G.Q.) in respect of excise shops in question during the concerned financial year 2013-14, as a result of which, the State suffered loss of substantial amount of revenue. It is submitted that therefore, the work of licensee cannot be said to be satisfactory and, therefore, the security money is not refundable to the petitioner.

4.1 It is further stated that even the amount of Rs. 23,500/- is due against the licences of the composite shops of group No. 57 as compounding fee for irregularities committed by the petitioner-licensee during the licence period.

4.2 Making the aforesaid submissions, it is requested to dismiss the present petition.

5. Heard learned counsel appearing for the respective parties at length.

5.1 At the outset, it is required to be noted that the petitioner has deposited a sum of Rs. 1,69,770/- by way of security deposit only as well as an equal amount of advance licence fee against the licence of composite liquor shop No.01, group No. 57 for the year 2013-14 in the district of Gaya.

5.2 It appears that so far as the amount deposited towards advance licence fee is concerned, the same is reported to be adjusted in the month of March 2014 as per the provision contained in condition No. 15(ga) to the sale notification. No rejoinder to the counter is filed to the aforesaid. Therefore, the petitioner is not entitled to refund of the advance licence fee, as the same has been adjusted in the month of March, 2014.

5.3 However, so far as the refund of the security deposit is concerned, even as per the counter, the same is required to be refunded at the end of period of licence. However, according to the respondent department, the security deposit is required to be refunded to only those licensees whose works during the period of licence is found satisfactory. According to the respondent department, as the petitioner committed some irregularities and not lifted the annual M.G.Q. and, therefore, it resulted in loss of revenue of the State and, therefore, the petitioner is not entitled to refund of security deposit. However, nothing is on record that any proceedings were initiated against the petitioner with respect to the so-called unsatisfactory performance and/or not lifting the annual M.G.Q. and, therefore, the petitioner committed breach of the terms and conditions of the licence. In absence of any proceedings, the authorities are not justified in retaining the amount of security deposit and, that too, without giving any opportunity of hearing to the petitioner. Even with respect to the so-called dues of Rs. 23,500/-, alleged to be payable by the petitioner against the licence of composite liquor shop No.01, group No. 57 as compounding fee for irregularities committed by the petitioner-cum-licensee during the licence period is concerned, nothing is on record that any proceedings were initiated imposing compounding fee for any irregularities. Without any ascertained liability and/or dues, the authorities are not justified in retaining the amount of security deposit, which otherwise is required to be refunded at the end of the licence period.

6. Under the circumstances, in absence of any order and proceedings in respect of any unsatisfactory work during the licence period and/or in absence of any ascertained liability/dues over composite fee with respect to any irregularities alleged to be committed by the petitioner during the licence period, the action of the respondent in withholding of the amount of security deposit is illegal and arbitrary and the same is not sustainable under the law.

7. In view of the above and for the reasons stated above, the present petition succeeds. The respondents concerned are hereby directed to refund/return the amount of Rs. 1,69,770/- deposited by the petitioner by way of security deposit against the

licence of composite liquor shop No.01, group No. 57 for the year 2013-14 in the district of Gaya, within a period of six weeks from today.

7.1 However, it will not preclude the authority for initiating any proceeding with respect to alleged irregularities and unsatisfactory work as alleged in the counter, if the same is permissible under the law now.

8. The present petition succeeds to the aforesaid extent. No costs.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

Spd/-Sanjay

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA