IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19205 of 2019

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Sarveshwar Singh S/o Sri Chakardhar Singh Resident of Village Mohanpur P.O. and P.S. Dharhara, Dist.Munger.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar,Patna.
2. The Commissioner of Excise, Govt. of Bihar,Patjna
3. The Collector, Munger
4. The Superintendent of Excise, Munger
5. The Bihar State Beverages Corporation Limited, a Govt. of Bihar Enterprise through its Managing Director at Ist Floor, Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001
6. S.C.I.,India Ltd., D.N. Singh Road,Bhagalpur

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ganga Prasad Bimal, Adv
For the Respondent/s : Mr. Pawan Kumar AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 21-08-2020

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief:-

> "(i) For issuance of appropriate writ. Order or direction for quashing the order dated 16.05.2018 passed by the Chairman-cum-Member, Board of Revenue, Bihar in Excise Case No. 29 of 2016 by which the application

filed by the petitioner for issuance of direction to the concerned respondent to reduce the license fee proportionately and to refund the license fee to the petitioner for a period of 53 days during which period he was unable to vend due to non supply of country liquor, has been dismissed.

(ii) For issuance of appropriate writ directing the concerned respondent to refund the license fee with interest @ 18% per annum form the date of deposit till the date of refund for a period of 53 days i.e from 31.01.2016, 10.02.2016, and 19.02.2016 to 31.03.2016, during which period the petitioner was unable to vend on account of the fact that as per contract no country liquor was supplied to the petitioner by the respondent in respect of his group 4 excise shops."

It is submitted on behalf of petitioner that a sale notification for settlement of various retail Excise Shops in various groups in the district of Munger through lottery system for the financial year 2015-16 was published and in response of which petitioner applied for settlement of group-IV Excise Shops consisting of (i) country liquor shop no. 4 (ii) composite liquor shop no.19, and in lottery same were settled in his favour for the financial year 2015-16 on an annual licence fee of Rs. 66,96,000/- (monthly licence fee Rs. 5,58,000) and (Rs. 22,26,600/-) monthly licence fee of Rs. 1,85,550/-) and in terms of clause-15(ga) of sale notification deposited advance licence fee and security money and requisite licence fee for the month of April-2015 and thereafter licences of both shops were issued to him and he operated the shops till the end of financial year-2015-16.

It is further submitted that as per clause-19(ka) of sale notification the licencee was required to lift 1/12th of the annual MGQ in each month. The licencee was allowed to lift the remaining quota of any month in the subsequent month. Petitioner in the month of January 2016 could lift only 1500 LPL of country liquor for his C.S. Shop No. 4 against the quota of 6200 LPL as the stock of BSBCL had become nil from 31.01.2016 to 10.02.2016. Quota of February, 2016 and March-2016, was not issued to the petitioner against the permit issued to him as the stocks were nil. Similarly, quota of March-2016, in respect of composite liquor shop was not issued to petitioner as stock was nil.

It is submitted that due to fault of respondent the petitioner could not transact business of country liquor for a total period of 53 days and petitioner during the relevant period deposited the entire licence fee including the cost price of country liquor, excise duty and sales tax in terms of sale notification.

It is further submitted that between January-2016 to

March-2016 a total quantity of 17100 LPL of country liquor could not be supplied for his shop no. 4 and 12100 LPL quota of March 2016, could not be supplied for his composite shop no. 19, as such total 18300 LPL of country liquor remained undrawn due to fault of respondents. A sum of Rs. 90 per LPL is included in licence fee and thus Rs. 16,47,000/-was realized from the petitioner against unsupplied quantity of country liquor and business of country liquor could not be transacted for 53 days, as such he is entitled for refund of the licence fee of the aforesaid 53 days and petitioner had filed Excise Case No. 39 of 2016 before the Board of Revenue, Bihar, Patna for refund of licence fee for 53 days which was dismissed by order dated 16.05.2018 passed by Chairman cum Member, Board of Revenue, Bihar, Patna in terms of clause-21 of the sale notification.

Counter affidavit has been filed on behalf of respondent-State in which it has been admitted that 17100 LPL of country made liquor was supplied to petitioner for the period between January-2016 to March-2016, as stock was nil. However, in terms of clause-21 of sale notification on account of non supply of liquor, closure of the shop, no compensation shall be payable and no remission of licence fee shall be granted. Clause-21 of sale notification is quoted hereinbelow:-

> “मदिरा की अनापूर्ति की दशा, दुकान खुलने मे विलम्ब, चुनाव के कारण दुकान की बंदी आदि की दशा मे सरकार द्वरा किसी भी प्रकार की छतिपूर्ति नही दी जाएगी और नहीं अनुज्ञाशुल्क मे छूट का कोई दावा स्वीकार किया जाएगा।“

Licence for the retail vend of country liquor including spiced country liquor was issued in the name of petitioner in Form-26c and condition-xix of licence reads as follows:-

> “That the conditions of the sale notification shall be deemed to be the conditions of this licence to the extent they are applicable.”

Learned counsel for the petitioner has relied upon three judgments passed by this Court i.e. **S.K.G Sugar Limited Vs State of Bihar and Ors** since reported in **1993(2) PLJR749**, **Rajesh Kumar Singh Vs. the State of Bihar & Ors(CWJC No. 7501 and 7944 of 2009)** and National Trading Corporation and Ors Vs. The State of Bihar and Ors since reported in **1991 (2) BLJR 1132** as well as one judgment of Apex Court **State of Madhya Pradesh Vs. Firm Gappulal and ors** since reported in **(1976) 1 SCC 791**, however, none of the judgments cited by the learned counsel for the petitioner deals with remission of licence fee, as such are not applicable in the facts and circumstances of the present case. Petitioner has not challenged the validity of terms and conditions of either sale notification or license granted to him.

This Court does not find any error or infirmity in the order dated 16.05.2018 passed by Chairman cum Member, Board of Revenue, Bihar in Excise Case No. 29 of 2016, accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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