IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 407 of 2017

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Sanjay R Kumar son of Late Raghunath Prasad resident of Balkishunganj, P.S. Gulzarbagh, District Patna.

... ... Petitioner/s

Versus

1. The State Of Biharthrough the Principal Secretary, Government of Bihar, Registration, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna.
3. The Bihar State Beverage Corporation Limited, a Government of Bihar Undertaking, Eastern Wing, 1st
4. The Depot Manager, Bihar State Beverage Corporation Limited, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s Satyabir Bharti, Sushmita Sharma, Kanu Priya, Abhishek Anand, Advocates

For the B S B C : Mr Grigesh Karan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE MADHURESH PRASAD)

Date : 27-04-2023

Heard learned counsel for the petitioner and the respondents.

2 The petitioner emerged successful in the tender process and was awarded exclusive privilege for manufacturing and supplying of Country Made Liquor (for brevity, ***CML***) to the warehouse of the 03rd Respondent located at the three districts of

Samastipur, Begusarai and Khagaria for the period 01.07.2009 to 31.03.2012 which was extended up to 30.11.2012.

3 The petitioner seeks a direction upon the 03rd Respondent for making payment of a sum of Rupees 7,12,941. 60 with interest. The said sum is claimed outstanding dues in respect of supply of 45,600 liters of CML in sachets to the Muzaffarpur warehouse of 03rd Respondent in between 24.11.2011 to 30.12.2011.

4 The petitioner's counsel submits that the petitioner had supplied the CML pursuant to an Order Passed For Supply (for brevity, ***OFS***) dated 22.11.2011 whereby he was directed to supply 50,000 liters of CML from Begusarai plant to the warehouse of the 03rd Respondent at Muzaffarpur/Depot as the Muzaffarpur contractor failed to supply the requisite quantity. In terms of the licence for manufacture and supply, the petitioner was bound to make such supply to the zone allotted to the adjoining contractor, in this case Muzaffarpur. He, therefore, supplied 45,600 liters of CML valued at a total sum of Rs 23,94,000/-. He, however, has been paid only Rs 16,81,058.40. The sum of Rs 7,12,941.60 remains outstanding, which is claimed in the instant proceedings.

5 The Joint Commissioner of Excise, Bihar, Patna, acting on orders of Excise Commissioner, Bihar, by letter dated

27.06.2013 bearing letter No 436, directed the 03rd Respondent to make payment of the balance dues to the petitioner and to take action against the concerned defaulting employees of the 03rd Respondent.

6 Petitioner's counsel submits that the petitioner should also be paid interest along with the standing amount due to him as the amount is admitted and have been kept deprived of the same for such a long time.

7 Learned counsel, representing the 03rd Respondent, submits that petitioner had expressed his inability to supply liquor to the adjoining district (Muzaffarpur) as per communication of the Superintendent, Excise, Muzaffarpur dated 20.12.2011. The respondents were, thus, compelled to make alternative arrangement. The manufacturer/supplier of CML from adjoining district of Muzaffarpur, i e at Sheohar, was, thus, issued an OFS of 50,000 liters of CML to Muzaffarpur. The said supplier from Sheohar had supplied the CML. Therefore, the entire supply made by the petitioner became surplus and could not be sold /consumed. The petitioner has been made payment for the quantity of his supply which was consumed/sold.

8 This Court is not impressed by the submission made on behalf of 03rd Respondent. The petitioner's alleged express inability is dated 20.12.2011. Thereafter, on 22.12.2011, OFS has been issued to the petitioner to supply CML in question. On the same date, the OFS has also been issued to the other contractor at Sheohar. As a result of such OFS, the quantum supplied by the petitioner is not in dispute. It is also nobody's case that after placing an OFS to the contractor of Sheohar, the petitioner had been informed that he was not required to supply the liquor. In fact, non-supply of the CML would have entailed adverse consequence to the petitioner in terms of the licence.

9 This Court, therefore, finds that the petitioner had no option but to supply the CML. Subsequent non-consumption of the same, due to dual arrangement made by the Respondent-Corporation, cannot be made a ground for depriving the petitioner from his dues for the supplies made. The reason assigned by the Respondents in the counter affidavit is clearly unsustainable and is rejected.

10 This Court directs that 03rd Respondent should pay the petitioner an amount of Rs 7,12,941.60. Since the petitioner has been deprived for the same for such a long time, for reasons which are arbitrary and unsustainable, this Court would consider it appropriate that the petitioner be paid interest at the rate of Rs 5% per annum from the date of supply till payment, which in any case, must be made within four weeks from the date of receipt/production of a copy of this Court.

11 Writ petition is allowed.,

(K Vinod Chandran, CJ)

(Madhuresh Prasad, J)

M.E.H./-

AFR/	AFR
CAV DATE	NA
Uploading Date	04.05.2023
Transmission Date	NA