IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12704 of 2016

==

Murlidhar Prasad Saundik son of Shri Bhagwan Sah resident of Mohalla - Nokha, P.S. Nokha, District Rohtas.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Rohtas.
4. The Assistant Commissioner of Excise, Rohtas.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Adv.
	:	Ms. Kanupriya, Adv.
	:	Ms. Sushmita Sharma, Adv.
For the Respondent/s	:	Mr. Lalit Kishore- Paag

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-08-2023

In the instant petition, the petitioner has prayed for the following relief:-

> *"(i) Issuance of writ of certiorari, quashing the order, dated 24.5.2016, as contained in memo No. 1230 (Annexure- 7), passed by the Assistant Commissioner of Excise, Rohtas, Sasaram, by which the application of the petitioner for refund of the advance license fee and movement fees deposited for the month of March, 2016 on the ground that the respondents had miserablv failed to ensure supply of country liquor to the retail liquor shops of the petitioner in the month of March, 2016, has been rejected on the pretext that in terms of clause 21 of the sale notification, the petitioner is not entitled for*

any compensation or refund of license fee.;

(ii) To direct the respondents to refund the advance license fee of Rs.1,08,000.00 and movement fee of Rs.15,600.00, totalling Rs.1,23,680.00 deposited the petitioner as advance license fee and movement fee respectively for the month of March, 2016;

(iii) To pass such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."

2. Brief facts of the case is that the petitioner was a holder of retail excise licence in the district of Rohtas. He had grievances that he is entitled to refund of advance licence fee and movement fees deposited for the month of March, 2016 on the score that there were no supply of liquors in the month of March, 2016.

3. In the guise of giving effect to the Bihar Excise and Prohibition Act, 2016, the official respondents had taken precaution not to supply liquors and de-activate excise matters in the month of March, 2016 itself in the light of the fact that Bihar Excise and Prohibition Act, 2016 would be enforced with effect from 01.04.2016.

4. In this backdrop, insofar as refund of movement fees is concerned, the matter is covered by a decision of this

Court decided on 30th of September, 2016, in C.W.J.C. No. 18863 of 2015 (Md. Daud Khan Vs. the State of Bihar & Ors.) and other connected matters and it is not disputed.

5. Insofar as refund of licence fee for the month of March, 2016 is concerned, whether the petitioner is entitled or not. Perusal of the Bihar & Orissa Excise Act, 1915 read with Rules, there is no provision for refund of licence fee for a particular month.

6. Learned counsel for the petitioner submitted that in the light of Rule 17 of The Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor/Foreign Liquor/ Beer and Composite Liquor Shop) Rules, 2007, it is evident that licence fee is being collected on monthly basis since there was no transaction at the behest of the State in the guise of implementation of the Bihar Prohibition and Excise Act, 2016. The petitioner is entitled to refund of licence fee.

7. In this regard, learned counsel for the petitioner cited a decision viz., **State of U.P. & Others Vs. Jagjeet Singh & Others**, as reported in **(2003) 8 SCC 270**. Para 16 and 17 of the same reads as under:-

> *"**16.** We may recapitulate the position as regards the cases decided by the High Court of*

Allahabad pertaining to the above provisions which have been referred to in the earlier part of this judgment. All those decisions relate to the period prior to 1998 i.e. before the amendment of Rule 34(ii). In the case of Hanuman Prasad Jaiswal [1983 UPTC 362] remission/damages was allowed since on facts it was found that it was a case which amounted to cancellation of licence for the rest of the period. Hence, such a closure was beyond the purview of Section 59. The case of Om Prakash Sharma [CMWP No. 375 of 1981, decided on 4-7-1991 (All)] was also on a different footing but the remission/damages was not refused; rather allowed, since it was found that the Government itself was at fault in not making supply of bhang from the bonded warehouse and did not make it available for sale to the licensee for a period of two months. In principle it was accepted that remission/damages could be claimed if due to fault of the Government the shop could not be opened for the purpose of sale for which the licence was granted. In the case of Harpal Singh and Ratnagar Mishra it has been held that such an application for remission would be maintainable where it is a case of total closure in the entirety and distinction was drawn between a partial and a total closure. In the case of Om Prakash it was observed that in view of the decision in the case of Ratnagar Mishra an application would lie for remission. In yet another case Om Prakash Gupta v. State of U.P. [CMWP No. 408 of 1996, dated 4-10-1996 (All)] decided by a learned Single Judge of the Allahabad High Court, it pertained to the year 1988 before *coming into force of the 1992 Rules. It was held that an application for remission would be maintainable and the same was allowed for the closure of shops for 5 days.*

17. *The position which finally emerges out is that an application for remission/damages for closure of shops in entirety auctioned in a group as is the case in the appeals in hand would be maintainable. But it is for the authorities concerned to consider the merit of the claim for remission/damages and pass any appropriate order looking to the facts and circumstances of the case in accordance with law. It would be the position as it relates to cases prior to the amendment of Rule 34 in 1998."*

8. The aforementioned decision do not assist the petitioner for the reasons that under Rules, 2007 cited supra does not provide for refund of licence fee. No doubt, there is no transaction among the petitioner and official respondent with reference to licence fee read with movement fee for the month of March, 2016, the licence fee is not refundable in the absence of any provision of law.

9. We have also noticed that merely non-supply of liquor to the petitioner's shop for the month of March, 2016, it is not that abruptly the petitioner's shop was closed for the month of March, 2016. The petitioner was permitted to continue to run the business till 31st of March, 2016, in other words he

has to transact with the existing stock. Moreover, the petitioner is not made out any effort to get licence cancelled as on 1st of March, 2016 in the event of the fact that he was not having any stock.

10. Therefore, the petitioner has not made out a case insofar as refund of licence fee for the month, March, 2016.

11. Accordingly, the writ petition is allowed in part.

12. The concerned respondents are hereby directed to refund the movement fees for the month of March, 2016, which is deposited by the petitioner along with the interest at the rate of 6% per annum, within a period of three months from today.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

Amrendra/ramesh

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	