

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19533 of 2011

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CHANDA RAI Son Of Shri Chandeshwar Prasad Yadav Resident Of Mohalla
Punaichak, P.S. Krishnapuri, District Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Collector, Patna.
3. The Assistant Commissioner Of Excise, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4
		Mr. Pramod Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-06-2023

The petitioner challenged the cancellation of his license to carry on a retail 'Foreign Liquor Off Shop' bearing No. 46 and sought restoration of permission to operate the shop at the existing site. As of now, there is a prohibition in place, within the State and there is no question of resumption of the license. The learned counsel for the petitioner has also confined the relief to the refund of the security deposit and advance amounts; which obviously has been forfeited.



The learned counsel for the petitioner submits that the petitioner applied for an “Off shop”; meaning a retail shop for sale of foreign liquor without permission for consumption within the premises. As required under the settlement notice, he proffered an objection free site. The site first offered by the petitioner was approved, but since the building in the site was demolished the petitioner submitted yet another objection free site at New Punaichak, Boring Canal Road, Patna. There was due inspection carried out in the premises as evident from Annexure-2 series. The site was approved by the District Collector and the petitioner commenced operation of the shop. While the shop was continued, without any notice, Annexure-3 order was passed directing the petitioner to shift the location of the shop within 24 hours; threatening closure on failure.

On 15.07.2011, the shop was sealed and the petitioner approached this Hon’ble Court. By Annexure-4 judgment, this Court set aside the order and directed the Collector to hear the parties on the next date; failing which the petitioner was found entitled to open his shop. The petitioner approached the Collector with a detailed representation as per Annexure-5. The Collector, however, reiterated the order, directing shifting to another objection free site; but granted 15 days time as per Annexure-6.



The petitioner preferred a statutory appeal before the Excise Commissioner on 23.08.2011 and it is also asserted though the appeal was heard on 16.09.2011, there were no orders passed. On 18.10.2011, cancelling the license of the petitioner and forfeiting the security deposit and advance amounts, an order was passed by the District Collector, even when the appeal was pending before the Excise Commissioner. The order dated 18.10.2011 cancelling the license of the petitioner is produced as Annexure-8, which is impugned in the above writ petition. Later, the appeal preferred by the petitioner was dismissed by the Excise Commissioner on 08.11.2011.

As was earlier observed, the petitioner is now concerned only with the refund of his security deposit and advance amounts. The petitioner has filed an Interlocutory Application challenging Annexure-11 order, which raised a demand against the petitioner under Section 43 of the Bihar Excise Act, 1915 as it existed at the relevant time. The said order has been challenged by way of an I.A. which, the learned counsel for the petitioner submits, is not pressed. The learned counsel for the petitioner also takes us through the provisions of the Excise Act to impress upon us that the consequence of no refund, arises only under Section 42 and the instant cancellation does not fall under Section 42 of the Act. It is



pointed out that if the 'objection free site' is not proffered by a licensee, then the only consequence would be that the licensee would not be able to commence the foreign liquor shop in which event, he would have to be refunded the advance amounts and the security deposit. Though, a cancellation other than on grounds specified under Section 42 entails the licensee to compensation; the petitioner does not seek for the same. It is also submitted by the learned counsel for the petitioner that the cancellation was effected without notice and when the appeal was pending before the Excise Commissioner.

The learned Government Advocate, on the other hand, submits that the last order impugned in the writ petition is appealable to the Board and the alternate remedy ought to be availed of. It is also pointed out that in any event, the State is entitled to the fee for the licensing period for which separate proceedings were initiated and Annexure-11 order passed, which demand has to be set off against the refund, if permitted by this Court.

We have considered the rival contentions. The petitioner had made an application for a license of an "Off shop" wherein consumption of liquor is not allowed. The petitioner had proffered an 'objection free site' which was duly inspected and approval



granted by the District Collector. The petitioner's contention that the inspection report would have pointed out any objection and the objection raised after the approval was granted by the District Collector cannot be countenanced. There is nothing to show that the inspection conducted or the approval made, is after a public notice to the residents of the locality. The inspection made is only with respect to the proffered site being one where the shop can be opened and continued. Only when the shop is established, the residents come to know of it and the specific objection raised is that the shop has been established in a thickly populated locality.

True the original order at Annexure-A3 which directed shifting of a shop with an objection free site within 24 hours, was arbitrary and also without any notice. However, the petitioner had taken up the matter before this Court and Annexure-4 resolved the prejudice caused to the petitioner. The District Collector was directed to hear the petitioner within a day and pass orders, on failure of which he was also permitted to open the shop. The District Collector in compliance with the direction of this Court passed Annexure-6 order after hearing the petitioner and the complainant.

The operative portion of Annexure-6 order reads as under.



“On going through the relevant material available on the record and submissions of the parties, it appears that the area where the excise shop in question has been opened, is a highly populated residential colony and there is a hospital near the excise shop in question. The objection of the Mohalla people – various reasons appears to be free from malice or ulterior motive in terms of Rule 48(C) of the Rules framed under the Bihar Excise Act. This aspect of the matter has to be kept in mind. The licensee Chanda Rai therefore cannot be allowed to run the excise shop in question at the existing site. The grievance of the licensee Chanda Rai is thus frivolous and not tenable.

Keeping in mind the aforesaid facts, the licensee Chanda Rai is hereby directed to offer another objection free site for the shop in question within 15 days failing, which the license granted to him will be cancelled.”

The peremptory direction to offer objection free site within 24 hours was modified to 15 days. The reasoning on which the petitioner was asked to shift the shop also cannot be found fault with. Be that as it may, the petitioner approached the Excise Commissioner in appeal and there was no stay obtained. The petitioner also approached this Court with the instant writ petition but there was no interim order obtained from this Court. The petitioner also failed to proffer an objection free site within 15 days or within a reasonable time after that. In that circumstance, the order of cancellation passed on 18.10.2011, two months later to the order of the Collector at Annexure-6 is a natural consequence and a notice would have been an empty formality.



We find no fault with the order of the District Collector or even that of the Excise Commissioner. There is no scope for judicial review and an interference on that count, to the orders passed by the District Collector and the Excise Commissioner.

Now the question arises as to whether the petitioner is entitled to a refund of the security deposit and advance amounts. Section 42 empowers the Authority notified to cancel or suspend the license, permit or pass. Such consequence arises if there is a transfer for sub-letting by the licensee (a), default in payment of duty or fee (b), breach of terms and conditions of license by the holder or his servants (c), conviction in any offence relatable to revenue or under the Dangerous Drugs Act, 1930, Merchandise Marks Act, 1889, or under the provisions of the I.P.C., introduced by Section 3 of the Excise Act (d), conviction in an offence under Section 167 of Sea Customs Act (e), an exclusive privilege being granted under Section 22 (f) or when the condition of the license permits cancellation or suspension at will. Sub-section (2) of Section 42 also enables cancellation of any other license granted to the licensee under this Act, if any such license granted is cancelled under Clause (a) to (e) of sub-section (1). Sub-section (3) speaks of suspension when there is a threat of cancellation and



sub-section (4) specifically speaks of non-entitlement for refund or compensation by reason of such cancellation.

Section 43 on the other hand speaks of a withdrawal of license on grounds other than those specified in Section 42; wherein sub-section (4) specifically speaks of a refund of the fee paid in advance or deposit made by the licensee, after adjusting the amounts due to the State Government.

A reading of Section 42 would indicate that the instant cancellation is not affected by reason of any of the grounds stated in the said provision. Admittedly, the petitioner made an application for a license for an “Off shop” which can be granted only on submission of an objection free site within 10 days of the settlement, as is evident from the settlement notice; specifically Clause 16 (ka). If the objection free site is not proffered, then of course there is no reason to forfeit the advance amount or security deposit. Likewise, when an approval is granted and on the basis of subsequent objection, the license is cancelled or withdrawn for grounds other than that of Section 42, there could be no forfeiture of the amounts or the consequence of refund denied to the licensee.

In the present case, the licensee was directed to offer an objection free site within 15 days and it is the admitted position



that no such site was offered within the time stipulated or later, definitely not till the order of cancellation was affected by Annexure-A6. There can be no forfeiture of the amounts paid as security deposit and advance amounts on such cancellation, which is not on grounds specified under Section 42. On the contrary, Section 43(4) specifically declares the right of the licensee to get refund of the security deposit and advance amounts after adjusting the dues to the State.

We are not speaking on the dues to the State especially since the learned counsel for the petitioner has not pressed the I.A. which sought to bring on record Annexure-11 and raise a challenge to it. The petitioner would be entitled to challenge it independently, if at all the State makes such demand. However, we make it clear that the consequence of no refund, by reasons of cancellation or withdrawal of license by Annexure-8, cannot be visited on the petitioner. We declare that the petitioner is entitled to the refund of the security deposit and advance amounts which shall be paid within a period of three months from today. If the amounts directed to be refunded are not paid within the time provided, then the petitioner would be entitled to 5% interest on the said amount from 18.11.2011; a month after Annexure-8 order.



The writ petition is allowed declaring the forfeiture of security deposit and advance amounts as a consequence of Annexure-8 to be not sanctioned under the provisions of the Excise Act. The parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
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