

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9879 of 2017

Ashok Sah Son of Shri Kishun Sah, Resident of Mohalla-Naya Bazar
Dalpatti, Ward No.31, Lakhisarai, P.S. Kavaia, District Lakhisarai.

... .. Petitioner.

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition
Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Lakhisarai.
4. The Superintendent of Excise, Lakhisarai.

... .. Respondents.

Appearance :

For the Petitioner	:	Mr. Satyabir Bharti, Advocate. Ms. Kanupriya, Advocate. Mr. Abhishek Anand, Advocate.
For the State	:	Mr. Ajeet Kumar, G.A.9.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-01-2024

In the instant writ petition, the petitioner has prayed
for the following relief(s):

“(i) For issuance of writ of certiorari, quashing the communication dated 13.06.2017, as contained in letter no.2556 passed by the Excise Commissioner, Bihar and communicated to the Deputy Commissioner of Excise (Distillery & Warehouses), Bihar, by which the application of the petitioner for refund of the advance license fee deposited for the month of March, 2015 and the license fee from 23.09.2015 to 30.09.2015 totalling



Rs.8,34,973.00 has been rejected solely on the ground that the Hon'ble Patna High Court vide its judgment and order dated 29.03.2016 passed in C.W.J.C. No.15685 of 2015 has merely directed for restoration of the license;

- (ii) To direct the respondents to refund the aforesaid amount of Rs.8,34,973.00 along with interest @ 18% per annum from the date of its deposit to the date of its actual refund;
- (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. On 20.01.2021, the following order was passed:

“Heard in part.

Let counter affidavit be positively filed within one week. Rejoinder, if any, be filed within two weeks thereafter.

List on 04.02.2021.”

3. Till today, respondents have failed to comply the order dated 20.01.2021. Further time cannot be granted for compliance of the order dated 20.01.2021. Therefore, we proceed to pass order with the available records.

4. Core issue involved in the present lis is whether the petitioner is entitled to one month advance license fee to be refunded to him or not?

5. The brief facts of the case are that the petitioner was a liquor license holder and he had a valid license for the



period from 01.04.2015 to 31.03.2016. Policy of the State Government in respect of liquor license is concerned, the concerned liquor trader who intends to have license, he is required to deposit one month license fee in advance and it was paid by the petitioner.

6. On certain alleged allegations relating to violation of certain provisions of the Excise laws, the jurisdictional Superintendent of the Excise invoked his power and proceeded to impose penalty of Rs.51000/- instead of cancellation of the license which stood as on 26.05.2015, the date on which the penalty of Rs.51000/- was imposed. Petitioner has not questioned the imposition of fine. Simultaneously the Collector with reference to the same alleged incident proceeded to cancel the license on 22.09.2015.

7. Feeling aggrieved by the action of cancellation of licence by the Collector, Lakhisarai, petitioner invoked the remedy of filing writ petition bearing C.W.J.C. No.15685 of 2015 and it was allowed on 29.03.2016. In this backdrop, the petitioner intends to have benefit of refund of one month advance license fee from the respondents/Excise Department. The same has been turned down on 13.06.2017. Hence, the present writ petition.



8. Learned counsel for the petitioner submitted that having regard to the fact that cancellation of licence dated 22.09.2015 has been set aside, the consequence follows. In the light of paragraph-46 of the order dated 29.03.2016 passed in C.W.J.C. No.15685 of 2015, consequence means whatever the benefit which is required to be adjudicated in respect of the petitioner is concerned and it is to be settled by the official respondents like one month advance license fee, which was remitted by the petitioner at the time of obtaining license for the period from 01.04.2015 to 31.03.2016.

9. Learned counsel for the petitioner submitted that in effect quashing of the order dated 29.03.2016 results in restoration of position as on 22.09.2015. It is submitted that orders of this Court is dated 29.03.2016. Thereafter, only two days had left over for the purpose of utilizing the license issued on 01.04.2015 and it is impracticable. In effect, the petitioner is entitled to refund of one month advance license fee which was lying with the State-respondents.

10. Per contra, the learned counsel for the respondents resisted the aforementioned contentions and submitted that in the absence of any specific direction in C.W.J.C. No.15685 of 2015 decided on 29.03.2016, one cannot



draw inference that the petitioner is entitled to refund of one month advance license fee. Therefore, the petitioner is not entitled to reliefs sought in respect of refund of one month advance license fee.

11. Heard the learned counsel for the respective parties.

12. Question for consideration in the present lis is whether the petitioner is entitled to refund of one month advance license fee with reference to the license issued in his favour for the period from 01.04.2015 to 31.03.2016 read with the factual aspects of the matter that for certain alleged allegations relating to the excise provisions, the Superintendent of Excise imposed fine of Rs.51000/- on 26.05.2015 and for the same incident, the Collector, Lakhisarai, cancelled the excise license of the petitioner on 22.09.2015 and it was set aside by this Court in C.W.J.C. No.15685 of 2015 on 29.03.2016.

13. Question of refund of advance license fee would arise only as and when consequential directions have been issued by this Court in C.W.J.C. No.15685 of 2015 on 29.03.2016, while setting aside the cancellation of licence dated 22.09.2015. The petitioner had remedy of filing Civil Review insofar as recalling the order dated 29.03.2016 passed in



C.W.J.C. No.15685 of 2015 and in seeking clarification in respect of paragraph-46. It is necessary to reproduce paragraph-46 to 48 of the order dated 29.03.2016 passed in C.W.J.C. No.15685 of 2015 and it reads as under:

“46. We, accordingly, set aside and quash the order, dated 22.9.2015, passed by the Collector, Lakhisarai, cancelling the licence held by the petitioner for liquor shops falling in Group-5 and direct the respondents to restore forthwith the licence held by the petitioner for the aforesaid shops. Consequences of quashing of the impugned order, dated 22.09.2015, shall follow.

47. This application is allowed, accordingly.

48. Before we part with this judgment, we make it clear that we have not gone into the other issues and submissions advanced on behalf of the petitioner and the respondents pertaining to power of competent authority under Section 68 of the Act to accept money *in lieu of cancellation or suspension of licence* for breach as envisaged in Clause (c) of Section 42(1) of the Act inasmuch as these issues have become, in our opinion, academic in nature for the purpose of present adjudication.”

14. Reading of the aforementioned order, one cannot draw inference that the petitioner is entitled to refund of advance license fee paid for one month. In the absence of any specific clarification by this Court in C.W.J.C. No.15685 of



2015 to the extent that what are the reliefs entitled cannot be inferred by the authorities or this Court in the present case that the petitioner is entitled to refund of one month advance license fee as claimed by him in the present writ petition. Moreover, there is no statutory provision for refund of any license fee in the event of cancellation of licence fee if it is set aside in a court of law. Therefore, there is no infirmity in the impugned order dated 13.06.2017.

15. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.01.2024
Transmission Date	NA

