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STATE OF BIHAR AND ORS.

v.

M/S SHEO NARAIN JAISWAL PVT. LTD. AND ORS.

OCTOBER 24, 1997

B

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

*Excise Law :*

C

*Bihar Excise Act, 1915: Sections 22,29,43(5)—Manufacturer and supplier of country liquor—Grant of exclusive privilege—Imposition of licence fee—More than one contractor/licensee in one zone—Full licence fees charged from each contractor—Held, tender conditions and conditions of the licence do not provide for collection of full licence fees from each contractor—Each licensee in one zone liable to pay total licence fee in equal proportion.*

D

*Words & Phrases :*

*'Equal Proportion'—Meaning of.*

E

The respondents were contractors engaged in manufacture and supply in wholesale of country liquor. Section 22 of the Bihar Excise Act 1915 empowers the State Government to grant exclusive privilege, inter alia of manufacturing and supplying wholesale country liquor within any specified local area. Tenders were invited for granting exclusive privilege. Initially the exclusive privilege was granted to only one contractor per zone. Notice inviting tenders was published in the Gazette and exclusive privilege was granted to more than one contractor in each zone. A dispute relating to payment of licence fee by each of the contractors within one zone arose. The State Government charged from each of the contractor in one zone full licence fee. On challenge, the High Court held that each of the licensees in one zone will have to pay the total licence fee in equal proportions. Hence the present petition for special leave to appeal by the State Government.

G

The contention of the State Govt. was that the word “equal proportion” has a reference to a proportionate reduction in the licence fee if the period for which the licence fee was to be paid was less than one year. It was also contended that since the licence fee was in the nature of consideration for the sale of exclusive privilege to supply liquor in wholesale, it was open to the

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state to charge from each contractor in a zone the full licence fee. A

Dismissing the appeal, this Court

**HELD : 1.1.** The High Court has rightly come to the conclusion that what is provided in the tender conditions as also under the licence is collection of the total licence fee for the zone from each of the contractors in that zone in equal proportions. [729-A] B

**1.2.** The words “in equal proportion” occur in the first part of conditions 2(b) of the tender notice and condition 6 of the licence. In the first part, there is no reference to the proportionate reduction in licence fee on account of the shorter period involved. The first part merely says that each of the contractors or licensee will have to pay in equal proportion the licence fee in advance. There is no reference to the period of the licence at all. For the excess sales during the period, the second half of each of these clauses expressly provides for increase to the same extent in the licence fee. There is no reference in either of these clauses to a period of less than a financial year being covered by the licence fee. Section 43(5) expressly provides in the statute itself for such proportionate reduction. [728-G-H] C D

**2.** If the tender conditions and the condition of the licence do not provide for charging full licence fee from each contract or in a zone, the State will not be able to collect the full licence fee from each of the licensee/contractor. Attention was also drawn to the minutes of the Cabinet meeting as indicating the purpose of giving the exclusive privilege to more than one contractor being to collect more licence fee. But if this intention is not conveyed in the terms and conditions of the tender and the licence, such an intention, even if expressed in the minutes of the cabinet meeting, would not be of any avail. [729-C] E

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) Nos. 20173-74 of 1996. F

From the Judgment and Order dated 20.5.96 of the Patna High Court in C.W.J.C. No 920/96 (R) and 927 of 1996 (R) G

Rakesh Dwivedi, Y.V. Giri, Yogeshwar Prasad, V.A. Motha, Dr. Shankar Ghosh and Shanti Bhushan, B.B Singh, Kumar Rajesh Singh, Praveen Kumar, Ranjit Kumar, S.P. Sinha, Chandra Bhushan, Ms. Anu Mohla, G.P. Bimal, M.K. Choudhary, P.K. Bajaj, S.K. Verma, Ms. Rachna Gupta, Ranbir Yadav and Munish Mishra for the appearing parties. H

A The Judgment of the Court was delivered by

**MRS. SUJATA V. MANOHAR, J.** The State of Bihar is petitioner no. 1 before us. Under the Bihar Excise Act, 1915, Section 22 provides that the State Government may grant to any person, on such conditions and for such period as it may think fit the exclusive privilege, inter alia, of manufacturing and supplying wholesale any country liquor within any specified local area. Under sub-section (2) no grantee of any privilege under sub-section (1) shall exercise the same unless and until he has received a licence in that behalf from the Collector or the Excise Commissioner. Under Section 29 instead of or in addition to any duty leviable under this Act, the State Government may accept payment of a sum of consideration for the grant of any exclusive privilege under Section 22. Section 43 which deals with the power to withdraw licences provides in sub-section (5) as follows:

D “43(5) : For the purpose of calculating the amount due to the State Government.....the amount of fee payable on account of the licence for the period during which it was in force shall be taken to be the sum bearing the same proportion to the total fee for the whole period for which the licence was settled as the period during which the licence was actually in force bears to the full period for which the licence was settled.”

E For the purpose of grant of exclusive privilege for wholesale manufacture and supply of country liquor, the State of Bihar has been divided into nine zones. The Board of Revenue invites tenders for the grant of the privilege of manufacture and wholesale supply of country liquor in sachets/bottles for each zone. Prior to 1995 the exclusive privilege was granted pursuant to the tenders received only to one supplier per zone. However, for the period 1st of July, 1995 to 31st of March, 1999, a notice inviting tenders was published in the Bihar Gazette on 3rd of June, 1995 in which it was stated in Clause 3(c) that in one zone more than one contractor may be granted the privilege of setting up sacheting plant and supplying of country liquor in sachets/bottles in the districts falling within the zone. Pursuant to the tenders which were invited petitioner no.1-State has granted this exclusive privilege to more than one contractor in each of the zones. The dispute relates to the licence fee which is payable by each of the contractors within one zone. The respondents are some of these contractors.

H It is common ground that for the purpose of determining the minimum licence fee payable in respect of each zone, the State arrived at the figures

of gross sale of country liquor in each zone during the previous financial year 1994-95. The annual licence fee for the subsequent financial year is determined at the rate of Re. 1 per L.P. litre of liquor supplied in the previous financial year. Schedule 1 to the tender notice gives the name of the zone, the consumption of country spirit in 1994-95 and other particulars. For example, in zone 1, that is to say Patna Zone, consumption of country spirit in 1994-95 was 31.66 lacs of L.P. litres. The licence fee for Patna zone for 1995-96 is accordingly worked out at Rs. 31.66 lacs. In zone 2, Gaya zone, the consumption of country spirit in 1994-95 is 23.29 lacs L.P. litres. The licence fee for Gaya zone is accordingly worked out at the rate of Re. 1 per L.P. litre.

Clause 2(b) of the tender notice which was in Hindi has been translated in English by the High Court as follows:

“From each contractor of special privilege, the licence fee calculated on the basis of Re. 1 per L.P. Litre on the annual guaranteed quantity in the particular zone in which they have to supply country liquor, shall be payable in equal proportion in advance in one lumpsum. If in the financial year the supply of liquor is in excess of the annual guaranteed quantity, the licence fee shall be enhanced to the same extent.”

The same term is incorporated in the licence which has been granted to each of the contractors; but in somewhat more explicit language. It is contained in condition no. 6 of the licence. The English translation of condition no. 6 (the original is in Hindi) as rendered by the High Court is as follows:

“6. In one zone, country liquor shall be supplied by more than one wholesaler. Every licensee shall have to deposit through challan in the Secretariat Treasury at Patna the advance licence fee in equal proportion in one lumpsum at the rate of Re. 1 per L.P. litre on the basis of consumption in the year 1994-95 as shown in Schedule 1 to the tender in respect of the zone in which country liquor is to be supplied. If in the financial year the supply is in excess of the guaranteed quantity, then the licence fee enhanced to that extent shall be payable by all the contractors. The licence fee is payable annually, and shall be payable in advance in each financial year, otherwise, the licence shall not be effective.”

Petitioner No.1 has charged from each of the contractors in one zone the full licence fee calculated at the rate of Re. 1 per L.P. litre based on

A consumption for the year 1994-95 in that zone. But according to the respondents, the licence fee so calculated is for each zone. The grantees of exclusive privilege/contractors in each zone have to pay this total licence fee in equal proportions.

B Condition No. 6 of the licence requires each of the licensees in one zone to deposit the advance licence fee in equal proportions. Clause 2(b) of the tender conditions also requires each contractor to pay the licence fee in equal proportion” in advance. The Hindi word used for “in equal proportion” is “Samanupatic.” The High Court has correctly translated the word “Samanupatic” as “in equal proportion.” Looking to condition 2(b) of the tender conditions and condition 6 of the licence, the High Court has held that each of the licensees in one zone will have to pay the total licence fee in equal proportions. For example, the licence fee for the Patna zone is Rs. 31,66,000. If there are five licensees for the Patna Zone, each licensee will pay 1/5th of this amount in advance. According to petitioner no. 1, this interpretation is incorrect. What is intended is that each of the licensees in one zone will pay the full amount of the licence fee. The words “in equal proportion” according to petitioner no.1 are referable to (1) the second halves of clause 2(b) of the tender notice and condition 6 of the licence which deal with a proportionate increase in the licence fee if, in the financial year in question, the supply of liquor is in excess of the previous years’ quantities. (2) They also contend that the word “equal proportion” has a reference to a proportionate reduction in the licence fee if the period for which the licence fee is to be paid is less than one financial year. They contend that the tender notice in question related to the period 1st July, 1995 to 31st of March, 1999. Therefore, for the first financial year the period involved is 1st of July, 1995 to 31st of March, 1996. Hence the licence fee payable by each licensee will have to be proportionately reduced to cover the period only of nine months instead of twelve months.

This contention has been rightly rejected by the High Court. The words “in equal proportion” occur in the first part of condition 2(b) of the tender notice and condition 6 of the licence. In the first part, there is no reference to the proportionate reduction in licence fee on account of the shorter period involved. The first part merely says that each of the contractors or licensees will have to pay in equal proportion the licence fee in advance. There is no reference to the period of the licence at all. The words “in equal proportion” in this sentence will have to be ignored if the interpretation of the State is to be accepted. For the excess sales during the period, the second half of each

of these clauses expressly provides for increase to the same extent in the licence fee. There is no reference in either of these clauses to a period of less than a financial year being covered by the licence fee. Section 43(5) expressly provides in the statute itself for such proportionate reduction. The High Court has, therefore, rightly come to the conclusion that what is provided in the tender conditions as also under the licence is collection of the total licence fee for the zone from each of the contractors in that zone in equal proportions.

It was pointed out by learned counsel for the State of Bihar that since the licence fee is in the nature of consideration for the sale of exclusive privilege to supply liquor in wholesale, it is open to the State to charge from each contractor in a zone the full licence fee. But if the tender conditions and the conditions of the licence do not so provide, the State will not be able to collect the full licence fee from each of the licensees/contractors. Our attention was also drawn to the minutes of the Cabinet Meeting as indicating the purpose of giving the exclusive privilege to more than one contractor being to collect more licence fees. But if this intention is not conveyed in the terms and conditions of the tender and the licence, such an intention, even if expressed in the minutes of the Cabinet Meeting, would not be of any avail.

The petitions are, therefore, dismissed.

S.V.K.I

Petitions dismissed.