

**SUPREME COURT OF INDIA**

State of Bihar

Vs.

Riga Sugar Co.Ltd.

C.A.No.7951 of 2019

(L.Nageshwara Rao and Hemant Gupta,JJ.,)

18.10.2019

**JUDGMENT**

**L.Nageswara Rao,J.,**

SLP(C)No.4647 of 2019

1. These Appeals arise from a judgment of the High Court of Judicature at Patna in the Writ Petitions filed by the Respondents. The Writ Petitions were allowed by the High Court and the Appellant- State was directed to refund the licence fee and the differential amount recovered from the Respondents for the period during which their premises were unlawfully sealed/closed. As the facts of each case are different, we proceed to deal with the Appeals separately.

2. A tender notice dated 31.01.2014 was issued by the Department of Excise and Prohibition, Government of Bihar, inviting applications for grant of Exclusive Privilege for manufacture and supply of country liquor in PET bottles. The State was divided into 17 zones and the 17 lowest applicants in the financial bid would be eligible for grant of Exclusive Privilege in accordance with their preference to a particular zone. By an order dated 04.03.2014, Exclusive Privilege for manufacturing and supply of country liquor for zone 11 constituting the districts of Muzzafarpur, Sitamarhi and Sheohar for the period between 01.04.2014 to 31.03.2019 was awarded to M/s Riga Sugar Company Limited (hereinafter, 'the Respondent'). The base rate fixed for supply of 200 ML PET bottle of country liquor was fixed at Rs.5.78/-. The difference between the base price and the bid price (in this case Rs.4.07/-) calculated on the Minimum Guaranteed Quantity (MGQ) was payable by the supplier to the Government in advance for a period of every three months i.e. on 15th March, 15th June, 15th September and 15th December. As per the tender conditions the supplier is required to obtain a licence in Form 27 for manufacture and supply of country liquor to Bihar State Beverages Corporation Limited (BSBCL) at the rate of Rs.1/- per litre calculated on the Minimum Guaranteed Quantity.

3. The Respondent was required to supply 5,25,220.786 LPL country liquor of 60 degree

strength per month. After issuance of a letter of grant on 04.03.2014, a liquor licence was obtained by the Respondent. Pursuant thereto, the Respondent established a bottling plant at Muzzafarpur and commenced production and supply of country liquor to BSBCL on 01.02.2015. As the Respondent was not supplying the prescribed quantity of country liquor to BSBCL, a warning was issued to ensure that the prescribed quantity of country liquor was supplied. On 09.12.2015, a penalty of Rs.1 lakh was levied on the Respondent for non-supply of minimum quantity of country liquor. Pursuant to the inspection report dated 13.12.2015, the premises of the Respondent was sealed by the Superintendent of Excise, Muzzafarpur for non-supply of minimum quantity of country liquor.

4. The State of Bihar announced a New Excise Policy and imposed total ban on consumption of alcohol in the State in a phased manner. The New Excise Policy which was announced on 21.12.2015 contemplated that no licence for manufacturing, trading and consumption of country liquor shall be granted from 01.04.2016. The respondent questioned the order dated 13.12.2015 by which its premises was sealed by filing a writ petition. Lack of opportunity to the Respondent before the order of sealing was passed prompted the High Court to allow the Writ Petition by its judgment dated 25.01.2016. In the meanwhile, the licence of the Respondent was suspended for a period of 90 days by an order dated 20.01.2016 issued under Section 42 (3) of the Bihar and Orissa Excise Act, 1915 (for short "the Act") as the liquor supplied by the Respondent was found to be of higher strength of 70.8 degrees UP instead of required strength of 60 degree UP. Another Writ Petition was filed by the Respondent questioning the order of suspension dated 20.01.2016 which was dismissed as withdrawn in view of the order of the Excise Commissioner, Bihar dated 04.02.2016 by which the earlier order of suspension dated 20.01.2016 was withdrawn. A notification was issued on 04.02.2016 directing that production, sale and utilization of all country liquor shall be completely prohibited in the State of Bihar w.e.f. 01.04.2016 and that the remaining stocks of all country liquor lying in the outlets as on 31.03.2016 shall be destroyed.

5. The Respondent submitted a representation seeking refund of the licence fee and differential amount for the period between 13.12.2015 to 04.02.2016 during which its manufacturing unit was closed. The Respondent quantified the amount of refund at Rs.1,29,42,928/-. On 31.03.2016, a notification was issued implementing the New Excise Policy by imposing an absolute ban on manufacturing, bottling, distribution, sale, purchase, possession and consumption of country liquor w.e.f. 01.04.2016.

6. The Respondent filed a Writ Petition in the High Court seeking a direction to the Appellants to refund the proportionate amount of licence fee calculated at the rate of Rs.1/- per LPL on the Minimum Guaranteed Quantity of country liquor and the differential amount calculated on the Minimum Guaranteed Quantity of country liquor for the period between 13.12.2015 and 04.02.2016.

7. The High Court heard the Writ Petition filed by the Respondent along with three other Writ Petitions. It was held that there was an earlier adjudication that the sealing of the premises was wholly unjust and improper and hence, the Respondent and other writ

petitioners were entitled for refund of the licence fee and the differential amount as prayed for. The Appellants, therefore, were directed to refund the amount of licence fee and the differential amount recovered from the Respondent for the period during which the manufacturing unit was sealed. Another reason for grant of relief by the High Court is that the manufacturers were not given an opportunity before orders of suspension and cancellation of licenses were passed. There was a further direction that the Appellant should consider the claims of the Respondent and the other Writ Petitioners regarding compensation for the value of the furnished raw material which could not be liquidated by 31.03.2016 due to the unlawful closure of the manufacturing premises.

8. It was contended by Mr. Maninder Singh, learned Senior Counsel appearing for the Respondent that the tender conditions were incorporated in the Exclusive Privilege and the licence was granted to the Respondent as per the scheme of the Act. The Exclusive Privilege in relation to the activities of the Respondent was under the supervision and control of the State. The employees of the Excise Department are deployed on the manufacturing plant to ensure that the tender conditions are complied with scrupulously. He submitted that the premises of the Respondent was sealed on 13.12.2015 for non-supply of the prescribed quantity of country liquor for the month of December, 2015 despite the warning issued on 23.11.2015 and a penalty levied on 09.12.2015. Another ground for sealing the premises was violation of the condition to maintain required buffer stock. During the pendency of the Writ Petition filed against the order dated 13.12.2015 by the Respondent in the High Court, the licence of the Respondent was suspended on 20.01.2016 on the basis of an inspection report of the Excise Chemical Engineer in which it was found that the strength of the liquor was higher than the prescribed 60 degree UP. Though the sealing order was set aside by the High Court on 25.01.2016, the premises were de-sealed only on 04.02.2016, on which date the order of suspension was withdrawn. Mr. Singh submitted that the order of sealing dated 13.12.2015 has no connection with the order of suspension dated 20.01.2016 which was for a different violation of the conditions of licence. He relied upon Clause 22 of the licence to submit that the Respondent is not entitled for any compensation. In this regard, he also referred to Section 42 (4) of the Bihar Excise Act according to which the holder of a licence shall not be entitled for any compensation for its cancellation or its suspension. The said provision further contemplates that the licensee is not entitled for any refund of any fee or deposit made. It was further submitted by Mr. Singh that the High Court committed an error in taking up all the four Writ Petition together, especially when the facts are different. He also questioned the finding of the High Court that the show- cause notice is necessary before an order of suspension was passed.

9. Mr. Navaniti Prasad Singh, learned Senior Counsel appearing for the Respondents submitted that the sealing order dated 13.12.2015 was set aside by the High Court by a judgment dated 25.01.2016 in CWJC No.1364 of 2016. The judgement has become final and necessarily the Respondent is entitled for refund of the licence fee and the deferential amount for the period between 13.12.2015 and 20.01.2016. The order dated 20.01.2016 by which the licence of Respondent was suspended was not brought to the notice of the High Court by the Appellants when CWJC 1364 of 2016 was heard. He submitted that in this

case no notice was given before the order of suspension was passed. The Writ Petition filed assailing the validity of the suspension order had to be withdrawn in view of the revocation of the order suspending the licence. He argued that the Respondent is entitled for refund of the licence fee and the differential amount even for the period between 20.01.2016 and 04.02.2016.

10. The point that arises for our consideration in this case is whether the Respondent is entitled to refund of the licence fee and the differential amount for the period during which the unit was sealed. Admittedly, the closure for the period between 13.12.2015 and 20.01.2016 was the subject matter of the judgement in CWJC No.1364 of 2016 which was allowed by the High Court and the judgment has become final. There cannot be any dispute that the Respondent is entitled for the refund of the licence fee and the differential amount in respect of the period between 20.01.2016 and 04.02.2016 covered by sealing order. We are also of the opinion that the Respondent is entitled for refund of the licence fee and differential amount even for the period of suspension i.e. 20.01.2016 to 04.02.2016 for the reason that no show-cause notice was given before the order was passed. Since orders of cancellation and suspension are punitive, the licensee should be given an opportunity before the licence is cancelled or suspended. Therefore, the judgment of the High Court is affirmed. Appeal is dismissed.

11. M/s Welcome Distilleries Private Limited, the Respondent herein was granted Exclusive Privilege for manufacture and supply of country liquor at the rate of Rs.4.32/- per 200 ml. PET bottle for Zone-4, constituting the districts of Rohtas and Kaimur for the period between 01.04.2014 to 31.03.2019. The Respondent established a bottling plant and commenced production and supply of country liquor to BSBCL on 01.02.2015. During an inspection conducted on 08.05.2015, it was found that the Respondent was not manufacturing country liquor as per the Minimum Guaranteed Quantity. A notice was issued to the Respondent on 15.07.2015 to deposit the advance of the differential amount upto that date as the Respondent failed to deposit earlier instalments of the differential amount. Consequently, the licence of the Respondent was suspended on 17.07.2015. The suspension was revoked on 20.07.2015. During the inspection conducted on 07.10.2015, it was discovered that the alcohol was substandard as the strength was higher than the prescribed strength of 60 degrees UP. The premises was sealed on 19.12.2015 and the Respondent received a show-cause notice dated 24.10.2015 to which he replied on 04.01.2016. After considering the response of the Respondent, an order was passed on 17.01.2016 suspending the licence which was challenged before the Board of Revenue. The Board of Revenue stayed the order of suspension on 01.02.2016. Thereafter, the premises were un-sealed on 09.02.2016. The unit was closed for five days between 29.02.2016 to 04.03.2016 and for 15 days between 17.03.2016 to 31.03.2016 for non-payment of the outstanding amount and for short supply of country liquor. The New Excise Policy was implemented by a total ban on manufacturing of country liquor w.e.f. 31.03.2016.

12. The Respondent filed a Writ Petition seeking refund of licence of fee and the differential amount for a period of 95 days during which either his premises was sealed or

his licence was suspended. It was contended on behalf of the Respondent that the repeated sealing of the premises and the suspension of the licence was illegal.

13. The High Court allowed the Writ Petition filed by the Respondent and directed refund as claimed for. The main reason given by the High Court for allowing the Writ Petitions was there was a prior adjudication that the sealing orders were illegal, is not applicable to the Respondent. According to the learned Senior Counsel for the State, the orders of sealing of the premises and the suspension of the licence were not the subject matter of any earlier adjudication by the High Court. On behalf of the Respondent, it was submitted that the repeated orders of sealing of the premises and the suspension of the licence would show the mala fide intention of the State. He brought to our notice that the order passed by the Board of Revenue on 01.02.2016, staying the suspension order dated 17.01.2016, in spite of which the premises continued to be sealed thereafter.

14. The sealing of the premises and suspension of licence of the Respondent was due to the non-payment of the required instalment of the differential amount and manufacturing of substandard country liquor. The order of suspension of the licence dated 17.01.2016 was stayed by the Board of Revenue on 01.02.2016. The State filed a Review Application before the Board of Revenue which was dismissed on 17.02.2016. Immediately thereafter, the premises were un-sealed on 19.02.2016. The closure of the premises, according to the Appellant, for five days between 29.02.2016 and 04.03.2016 was due to the non-deposit of the outstanding differential amount and from 17.03.2016 to 31.03.2016 was due to short supply of country liquor are justified.

15. As the closure of the premises of Respondent was due to the violation of the tender conditions and the conditions of licence, the High Court committed an error in allowing the Writ Petitions filed by the Respondent. Admittedly, there was no prior adjudication in respect of the sealing of the premises or suspension of the licence in favour of the respondent. Therefore, the reason given by the High Court for holding that the Respondent is entitled for refund i.e., on the ground of prior adjudication is not correct. The High Court erred in holding that no show-cause notices were issued before the orders of suspension and sealing of the premises were passed. The notices given on 15.07.2015, 24.12.2015, 25.02.2016 and 26.03.2016 would indicate that the Respondent was given sufficient opportunity. Moreover, in its response to show-cause notice dated 24.12.2015. the Respondent submitted his explanation in which there was an admission of production of sub-standard country liquor. The judgment of the High Court cannot be sustained and is set aside.

16. M/s Shipra Beverage Private Limited, the Respondent herein was granted Exclusive Privilege for manufacture and supply of country liquor in zone-5 constituting Gaya and Aurangabad districts. An inspection was conducted on 04.01.2016 during which it was found that there is a deficit stock and there was violation of Clauses 2(d) (iii) and Clause 2(d) (ii) (f) of the letter of grant and Clause 9(f) of the Licence. A show-cause notice was issued to the Respondent on 27.01.2016. In view of the aforesaid irregularities, the licence of the Respondent was suspended under Section 42 of the Bihar Excise Act on 02.02.2016.

Thereafter, the licence was cancelled on 13.02.2016. The Respondent filed CWJC No.2704 of 2016.

The High Court set aside the order dated 13.02.2016 by its judgment dated 20.04.2016.

17. The complaint of the Respondent is that the manufacturing unit stood closed between 02.02.2016 and 31.03.2016 due to suspension and cancellation of the licence. The orders were challenged successfully in the High Court. The Respondent filed a Writ Petition seeking refund of the licence fee and the differential amounts for the period of closure between 02.02.2016 and 31.03.2016.

18. As the suspension of the licence of the Respondent and cancellation of the licence have been declared illegal by the High Court by its judgment dated 20.04.2016 in CWJC No.2704 of 2016, the Respondent is entitled for the relief granted by the High Court. The Appeal is dismissed.

19. M/s K.M. Sugar Mills Limited, the Respondent-herein was a successful bidder for manufacturing and supply of country liquor for Zone-10, constituting districts of East Champaran and West Champaran for the period from 01.04.2014 to 31.03.2019. An inspection was conducted on 27.05.2015 during which it was found that the strength of the manufactured liquor was below the required strength of 60 degree UP. A notice was issued on 27.05.2015 by which the Respondent was directed to show cause as to why his licence should not be terminated for causing huge loss to the Government. The Respondent was also directed to explain as to why a fine of Rs.4,51,08,493/- should not be imposed on him for not maintaining the prescribed strength of 60 degree UP and for illegally manufacturing excess liquor. The Respondent submitted its explanation on 11.06.2015 and 01.07.2015. After considering the explanation submitted by the Respondent, the Excise Commissioner imposed a penalty of Rs.4,51,08,493/- under Section 42 (g) (i) of the Act. As the Respondent failed to pay the penalty amount, the premises were sealed on 22.02.2016. As stated above, the New Excise Policy came into force on 31.03.2016, and the grievance of the Respondent in the Writ Petition was that the sealing of the premises for the period between 02.02.2016 to 31.03.2016 is illegal. Therefore, the Respondent is entitled for refund of licence fee and the differential amount. The High Court failed to notice that there is no prior adjudication in favour of the Respondent and the Respondent was given an opportunity to show cause as to why the premises should not be sealed. After considering the explanation submitted by the Respondent, the penalty was imposed on the Respondent and due to the failure of the payment of the amount of penalty, the premises were sealed.

20. In view of the above, the Civil Appeal No. 7958 of 2019 arising out of SLP (C) No. 3595 of 2019 is allowed.

21. All the Appeals are disposed of accordingly.