

(2006) 02 JH CK 0010

Jharkhand High Court

Case No: L.P.A. No. 506 of 2005

Lakshmi Narayan Ramswaroop
and Company

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Feb. 27, 2006

Citation: (2006) 2 JCR 360

Hon'ble Judges: S.J. Mukhopadhaya, J; Dilip kumar sinha, J

Bench: Division Bench

Advocate: D.V. Pathy, for the Appellant; I. Sen Choudhary, S.C.-III, for the Respondent

Final Decision: Dismissed

Judgement

1. All these appeals have been preferred by the appellants against common judgment and order dated 19th July, 2005 passed by the learned Single Judge, whereby and where under, the writ petitions preferred by the appellants were dismissed.

2. It appears that the Respondents issued a Notice Inviting Tender (N.I.T. for short) in the newspaper dated 17th January, 2005 for wholesale supply of country liquor in the State of Jharkhand for the period from 18th March, 2005 to 31st March, 2008. The appellants along with others including intervenors therein, participated in the N.I.T. by submitting tender papers for different districts. Grant of licence in respect to wholesale supply of liquor was proposed to be made in pursuance of the Notification dated 21st May, 2004.

3. In the writ petitions, the appellants challenged an order contained in letter No. 729/2005 dated 12th May, 2005 wherein the Commissioner of Excise, Government of Jharkhand invited six persons including intervenors for negotiation for the purpose of allotting tender for wholesale supply of country made liquor. The appellants having not been called in spite of submission of tender papers, the writ petitions

were preferred challenging the aforesaid letter dated 12th May, 2005 and for issuance of writ of mandamus on the Respondents to consider the cases of appellants for grant of licence with respect to wholesale supply of liquor.

4. Learned Single Judge by impugned judgment while found that the appellants were not fulfilling all the conditions and having noticed the rival contentions, held the appellants defaulter.

5. Learned Counsel for the appellants while submitted that the aforesaid finding is error of record, as all the appellants were fulfilling all the conditions, as laid down in the N.I.T., also submitted that the appellants cannot be held to be defaulters. Default, if any, related to a dispute in respect to retail sale of foreign liquor, which has no nexus with the grant of licence in respect to wholesale supply of liquor.

6. According to the appellants, they were granted licence in retail sale of foreign liquor for the period July, 2004 to March, 2007. The appellants were depositing the requisite Excise licence fee, within time, in terms of the contract i.e. by 20th day of every month. Suddenly, the Respondents changed the terms and conditions relating to adjustment of advance licence fee deposited by appellants due to which it was shown that they were defaulters. The aforesaid action on the part of the State has already been challenged by them before this Court which is pending, wherein interim order has been passed prohibiting the Respondents from taking any coercive steps against the appellants and the notification was subsequently stayed.

7. From the record, it appears that the appellants had not paid licence fee of certain period within time, which was paid after 20th of a particular month. The question as to whether in those cases, adjustment should have been allowed or appellants should be treated as defaulter, cannot be determined in these cases, as the matter is pending before this Court.

8. It is not in dispute that for one or other reasons, the appellants failed to pay the licence fee within stipulated period, that is one of the ground to refuse grant of licence to the appellants, they being defaulter. In future, the appellants may be declared as "not defaulter" cannot be a ground to interfere with the order passed by the learned Single Judge.

9. Apart from the aforesaid fact, it appears that in the writ petitions, the appellants had not challenged the licence granted in favour of one or other person for the period 2005-08 and none of the individual were made party Respondents in the writ petitions. In one of the writ petitions i.e. W.P.(C) No. 2894 of 2005, though a petition for amendment (I.A. No. 1487 of 2005) was filed for impleading one Genuine Bottlers Pvt. Ltd. and another Jeevan Kumar Das, as party Respondents to the said writ petition, but no prayer was made challenging the licence granted in their favour. The said petition (I.A. No. 1487 of 2005) was not moved before the learned Single Judge and thereby, no order was passed to implead them as party Respondents.

10. As the licences have already been granted in favour of the individuals and they were not impleaded as party Respondents to the writ petitions and licence granted in their favour were not challenged, no relief can be given by this Court.

11. There being no merit, the appeals are dismissed.