

Avinash Jaiswal and Another Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Feb. 15, 2011

Acts Referred: Bihar and Orissa Excise Act, 1915 â€” Section 2(7), 23, 23(2), 7
Jharkhand Excise Rules â€” Rule 143, 144

Citation: (2011) 2 JCR 328

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

Mr. Das, learned Counsel appearing for the Petitioners, submitted that the Petitioner No. 2 Vivek Pandey was granted

vendor licence in the name of his place of business as ""Baithak Restaurant"", Jamshedpur being licence No. 34/2009-2010. Thereafter, he entered

into partnership with Petitioner No. 1 Avinash Jaiswal and got a partnership firm registered for running the said ""Baithak Restaurant"". Then, an

application was made for insertion of the name of the Petitioner No. 1 also in the licence on which recommendations were made after verification.

But the Respondent No. 2 vide order dated 16.10.2010 as contained in letter No. 1131, rejected the request of the Petitioners saying that there is

no clear provision for insertion of the name of any person as partner in the licence and that, as per Rules 143 and 144 of the Jharkhand Excise

Rules, power to transfer licence is vested with the Deputy Commissioner. He further submitted that according to the said Rules, the Collector who

is the Excise Commissioner in view of Section 2(7) read with Section 7 of the Jharkhand Excise Act, has been vested with the power to

permit/approve transfer/sub-letting of licence to any other person. He also submitted that as per Section 23(2) of the Jharkhand Excise Act, letting

or assignment can be made to another person, only with the approval of the Collector who is the Excise Commissioner. He further submitted that

only the Excise Commissioner is empowered to grant licence and therefore, he has got power to amend / insert the name of the partner in the

licence.

2. Mr. Abhay Prakash, learned Counsel appearing for the State, submitted that in the absence of the counter-affidavit, he is not in a position to

either accept or controvert the statements made in the writ petition or the said submissions made on behalf of the Petitioners. However, supporting

the impugned order, he submitted that there is no provision for insertion of name of the partner in the licence.

3. In my opinion, in view of Section 2(7) read with Section 7 read with Section 23 read with Rules 143 and 144 of Jharkhand Excise Act/Rules,

even letting/assignment/transfer/sub-lease of licence (whether entire or partial) is permissible with the permission/ approval of the Collector who is

the Excise Commissioner. In this case, only insertion of name of the partner, in the licence is requested, which prima facie would not cause

prejudice to the Department or any other person in any manner.

4. In the result, the impugned order dated 16.10.2010 as contained in Letter No. 1131 passed by the Commissioner, Excise, Government of

Jharkhand, Ranchi (Respondent No. 2), is set aside. The matter is remitted back to him to take a fresh decision on the request of the Petitioners.

If, he is satisfied that the Petitioner No. 2 has actually entered into partnership with the Petitioner No. 1, and insertion of the name of the Petitioner

No. 1 in the licence is not prejudicial to the Department or any other person, he will pass necessary order for insertion of the name of the Petitioner

No. 1 in the licence. If however, he is of the opinion that acceptance of the request of the Petitioner No. 2 will cause prejudice to the Department

or any other person, he may refuse such prayer by communicating reasons thereof to the Petitioners. This exercise should be completed within one

month from the date of receipt of a copy of this order.

With these observations and directions, this writ petition is disposed of.