

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 2047 of 2021

Pramod Kumar Roy Petitioner
 Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Bokaro
5. The Assistant Commissioner of Excise, Bokaro ... Respondents

W.P.(C) No. 2048 of 2021

Rakesh Kumar Petitioner
 Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Bokaro
5. The Assistant Commissioner of Excise, Bokaro ... Respondents

W.P.(C) No. 2050 of 2021

Pankaj Kumar Jaiswal Petitioner
 Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Bokaro
5. The Assistant Commissioner of Excise, Bokaro ... Respondents

W.P.(C) No. 2105 of 2021

Ghananand Patel Petitioner
 Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Hazaribagh
5. The Assistant Commissioner of Excise, Hazaribagh

... .. Respondents

W.P.(C) No. 2110 of 2021

Mukesh Kumar Singh Petitioner
 Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise

- & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
 4. The Deputy Commissioner, Giridih
 5. The Assistant Commissioner of Excise, Giridih ... Respondents

W.P.(C) No. 2122 of 2021

Loknath Singh Petitioner

Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Giridih
5. The Assistant Commissioner of Excise, Giridih ... Respondents

W.P.(C) No. 2123 of 2021

Uday Prasad Petitioner

Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Ramgarh
5. The Assistant Commissioner of Excise, Ramgarh ... Respondents

W.P.(C) No. 2045 of 2021

Tarun Kumar Petitioner

Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Bokaro
5. The Assistant Commissioner of Excise, Bokaro ... Respondents

W.P.(C) No. 2049 of 2021

Sunil Kumar Singh Petitioner

Versus

1. The State of Jharkhand
2. The Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi
4. The Deputy Commissioner, Bokaro
5. The Assistant Commissioner of Excise, Bokaro ... Respondents

W.P.(C) No. 2065 of 2021

Ranjit Kumar Petitioner

W.P.(C) No. 2104 of 2021

Versus

W.P.(C) No. 2106 of 2021

Versus

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

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Dated: 30.06.2021

With the consent of learned counsel for the parties, all these writ petitions, having similar issue, are being heard and

disposed of by this common order through Video conferencing.

2. The present writ petitions have been filed with following prayers:

(a) For issuance of direction upon the concerned respondent to modify/alter/vary the amount of Minimum Guaranteed Revenue (MGR) fixed for the retail liquor shops of the petitioner(s) situated within the districts of Bokaro, Hazaribagh, Giridih, Ramgarh and Ranchi for the financial period 2021-22 to the extent of quantity of liquor lifted/issue be taken till the situation normalizes in view of changed circumstances as well as decisions taken by the State Government and the department of Excise & Prohibition due to spread of COVID-19 pandemic such as reduced opening hours for the liquor shops, imposition of lockdown etc., adversely affecting the sale of liquor.

(b) For issuance of direction upon the concerned respondent to modify/alter/vary the notification as contained in memo no. 912 dated 25th May, 2021 issued by the respondent no.2 for reducing fixed Monthly Minimum Guaranteed Revenue to 33% of the original fixed Monthly Minimum Guaranteed Revenue or to the extent of actual lifting of liquor (whichever is greater) realized from the retail liquor shops instead of 50% in view of reduced opening hours of retail liquor shops within the State of Jharkhand in the prevailing circumstances.

3. The learned counsel for the petitioners jointly submit that the petitioners are the retail licensees of IMFL as well as country liquor in the districts of Bokaro, Hazaribagh, Giridih, Ramgarh and Ranchi. It is further submitted that in exercise of powers conferred under sub-sections 1 and 3 of Section 89 of Jharkhand Excise Act, 1915, Government of Jharkhand in supersession of earlier Rules/Circulars/Provisions, has formulated Jharkhand Excise (Settlement and Handling of Shops for Retail Sale of Liquor) Rules, 2018 (in short 'Rules, 2018') for settlement and handling of retail

liquor shops within the State of Jharkhand. Subsequently, some of the provisions of the said rules were amended vide notification dated 4th October, 2019. Rule 2 of Rules, 2018 defines various terminology used in the said Rules. Rules 2(xxi), 2(xxii) and 2(xxiii) of the Rules, 2018 contains definition of Excise Transport Duty (ETD), Minimum Guaranteed Duty (MGD) and Excise Revenue collected from sale of liquor respectively. Further, Rule 8 of Rules, 2018 provides that estimate of excise revenue, licence fee, ETD and Minimum Guaranteed Revenue of the State/District wise would be done by the Commissioner of Excise. Rule 8 further provides that monthly ETD shall be deposited by the licensees in the account of Jharkhand State Beverages Corporation Limited (in short 'JSBCL') in advance. Rule 19(1) of the Rules, 2018 provides for the manners in which settlement of retail shops will be made. It provides that retail shops of liquor will be settled for three block years initially. However, every year the licenses for the shops are required to be renewed subject to running of the shops by the licensees satisfactorily as per rules and in accordance with the conditions fixed by the department, on the basis of collection of desirable excise revenue for previous and current financial years. Process for renewal of the licenses has been mentioned in Rule 20 of the said Rules. Rule 25(3) of Rules, 2018 provides that the licensee had to deposit required fees/duty by 25th day of each month. However, the licensee can lift liquor as per MGD till the last day of month. Rule 25(3) of the said Rules further provides that if the licensee fails to lift liquor as per MGD fixed for the month, then he shall request in writing that he must lift the remaining quantity of liquor till the 10th day of next month and if he fails to do so till that day of next month, he shall have to deposit an amount in treasury equivalent to balance MGD against which liquor could not be lifted, otherwise the licensee has to pay late fine @ 5% per day on balance MGD. The said facility to lift the balance quantity of liquor till the 10th day of next month is to be provided only twice in a financial year, but not in consecutive months.

4. It is also submitted that from the beginning of present licence year i.e., April 2021, the State of Jharkhand as well as the

entire country faced surge in COVID-19 cases compelling the State Government to impose restrictions with a view to curb further spread of COVID-19 cases and casualties. Initially, the closing time of liquor shops were preponed from 11 p.m. to 8 p.m., but subsequently the opening hours of the liquor shops were reduced being operational from 10 a.m. to 2 p.m. in place of 10 a.m. to 10 p.m. Due to reduced shop opening hours, not only the petitioners, but other licensees also witnessed fall in sale of liquor by 35% to 40% in the month of April, 2021. Under the said situation, the petitioners through their association submitted a representation on 27.04.2021 before the respondent no. 2 – the Secretary-cum-Commissioner of Excise, Department of Excise & Prohibition, Government of Jharkhand, Ranchi requesting inter alia to deduct excise transport duty only on the basis of actual lifting of liquor instead of fixed monthly ETD. The petitioners requested that for 1st quarter of Financial Year 2021-22 (i.e. from 1st April to 30th June), ETD should not be realized on the basis of fixed monthly ETD, rather the same should be charged on the basis of actual issue/lifting of liquor as in the month of April 2021, they could lift only 30% to 40% of the monthly quota, but entire amount of ETD was realized from their wallet. The petitioners also requested for adjustment of balance amount in the subsequent months' ETD. Thereafter, in view of sudden rise in COVID-19 cases in the State of Jharkhand, all business activities were restricted from 6 a.m. to 3 p.m. Further, vide order as contained in memo no. 82/CS/Res. dated 28th April, 2021 issued by Home, Prison & Disaster Management Department (Disaster Management Division), Government of Jharkhand under the signature of Chief Secretary, Jharkhand, it was directed to all the Departments of Government of Jharkhand to ensure that 'Swasthya Suraksha Saptah' be observed by all from 6 a.m. of 29th April, 2021 till 6 a.m. of 6th May, 2021 during which several restrictions were imposed. Clause 1 (XIV) of the said order provided that excise shops shall be opened till 2 p.m. The aforesaid order was subsequently extended from time to time and is also continuing presently. The Jharkhand Retail Liquor Shop Owners' Association again submitted a representation to the respondent no. 2

on 29th April, 2021 stating the difficulties being faced by the retail licensees and accordingly, prayed for extending the time till 15th May, 2021 for lifting of quota of liquor for the month of April, 2021 and further requested for realization of monthly ETD as per actual lifting of liquor instead of fixed monthly ETD. The respondent no.2 vide notification as contained in memo no. 912 dated 25th May, 2021 has revised the monthly quota of fixed excise revenue for the month of May, 2021 to the extent of actual lifting of liquor in that month or 50% of the fixed excise revenue whichever is greater. The decision to reduce the fixed monthly excise revenue to 50% is also not enough in view of the fact that the opening hours for the retail liquor shops have been reduced to only 4 hours instead of earlier duration of 12 hours i.e., 1/3rd of the normal opening hours that too in the morning hour when there is minimum sale of liquor. In the said situation, the Jharkhand Retail Liquor Shop Owners' Association once again submitted representation on 28th May, 2021 to the respondent no. 2 requesting therein to reconsider his decision and to reduce the fixed minimum excise revenue to 33% of the monthly quota of May, 2021 or as per the actual lifting of liquor.

5. It is further submitted on behalf of the petitioners that in the prevailing circumstances, it is not possible for the petitioners to run their liquor shops by paying monthly fixed Minimum Guaranteed Revenue especially in view of the fact that instead of normal working hour of 12 hours i.e., from 11 a.m. to 11 p.m., excise shops have been permitted to run only for four hours (i.e., from 10 a.m. to 2 p.m.). Under the circumstance, where working hours of the retail liquor shops have been reduced to the extent of four hours only i.e., 1/3rd of the normal opening hours, the petitioners are entitled for reduction of fixed monthly Minimum Guaranteed Revenue to 33% of the original fixed monthly excise revenue or the respondents should realize ETD on the basis of actual lifting of liquor in a particular month. The said situation has compelled the petitioners to file the present writ petitions.

6. The learned counsel for the petitioners appearing in the respective writ petitions submit that the respondent no. 2 has

commenced hearing on the representations filed by the petitioners of W.P.(C) No. 2033 of 2021 and other analogous cases in terms with order dated 22.06.2021 passed in the said writ petitions and, therefore, the petitioners may also be allowed to file their representations afresh before the said respondent so as to join the hearing being conducted by the respondent no. 2.

7. The learned counsel for the respondents appearing in all the writ petitions jointly submit that the State Government considering the difficulty of retail liquor licensees during this pandemic period, has already reduced monthly Minimum Guarantee Revenue for the month of May, 2021 to the extent of 50% or actual lifting of liquor, whichever is higher. Nevertheless, if the petitioners have any further grievance, they may agitate the same before the respondent no. 2 by filing fresh representations on the present issue which will be decided expeditiously.

8. Having heard learned counsel for the parties and keeping in view the nature of prayer made by the petitioners in the present writ petitions as well as that in pursuance of order dated 22.06.2021 passed by this Court in W.P.(C) No. 2033 of 2021 and other analogous cases, the respondent no. 2 is said to be continuing with the process of hearing on the representations filed by the petitioners of aforesaid cases, the present writ petitioners are also given liberty to file fresh representations before the respondent no. 2 by 02.07.2021 on the present issue. On receipt of the said representations, the respondent no. 2 shall allow the petitioners to join the hearing being conducted by him on the earlier representations filed in pursuance of order dated 22.06.2021 passed in W.P.(C) No. 2033 of 2021 and other analogous cases and shall take appropriate informed decision in accordance with law expeditiously.

9. The present writ petitions are accordingly disposed of with aforesaid liberty and direction.

(Rajesh Shankar, J.)