

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 2845 of 2022

Suresh Kumar Shivhare

..... Petitioner

Versus

1. The State of Jharkhand, through the Principal Secretary, Department of Excise and Prohibition, Ranchi
2. The Excise Commissioner, Department of Excise and Prohibition, Government of Jharkhand, Ranchi
3. The Joint Commissioner, Department of Excise and Prohibition, Government of Jharkhand, Ranchi
4. The Assistant Commissioner, Department of Excise and Prohibition, Government of Jharkhand, Jamshedpur, East Singhbhum Respondents

CORAM

HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner: Mr. Indrajit Sinha

For the State: Mr. Ashish Kr. Thakur, A.C to A.A.G-III

04/29.09.2022 The present writ petition has been filed for issuance of direction upon the respondent authorities to charge excise transport duty and excise duty for the actual stock lifted for the month of April, 2022 and consequently to refund the excess amount deducted towards excise transport duty and excise duty for the said month to the tune of Rs.12,86,056/- & Rs.1,07,100/- (ETD) and Rs.2,26,951/- & Rs.18,900/- (ED) respectively with respect to the shop bearing licence Nos. 060_FLX_EAS_19-20 & 035_CLX_EAS_19-20 respectively. Further prayer has been made for issuance of direction upon the respondent authorities to forthwith refund the security amount of Rs.12,00,000/- & Rs.1,20,000/- deposited with respect to the aforesaid licences respectively for the block period of three years with effect from 1st April, 2019 to 31st March, 2022.

Learned counsel for the petitioner submits that the respondent-State of Jharkhand in exercise of power conferred under Sections 89(1) & 89(3) of the Bihar Excise Act, 1915 framed a rule known as the Jharkhand Excise (Settlement and Operation of Shops for Retail Sale of Liquor) Rules, 2018 (hereinafter to be referred as 'the Rules, 2018'), which was notified vide notification dated 24th December, 2018. In terms with the said Rules, 2018, the Department of Excise and Prohibition, Government of Jharkhand issued a notice inviting applications for settlement of retail liquor shops in the district of East Singhbhum through

lottery. The petitioner participated in the said settlement process for allotment of retail liquor shops and on being declared successful, a group of Liquor Shops were settled in his favour at Khasmahal, Jamshedpur, East Singhbhum for the block period of three years i.e. from 1st April, 2019 to 31st March, 2022 and to that effect the licences bearing licence Nos. 060_FLX_EAS_19-20 (Foreign Liquor Shop) & 035_CLX_EAS_19-20 (Indian Made Foreign Liquor Shop) were also issued in his favour. The Government of Jharkhand took a policy decision whereby the private retail liquor licence system on the expiry of existing licence period was put to an end. The new system was to be made operational with effect from 1st May, 2022. Since the licences of the petitioner and other similarly situated retailers were effective till 31st March, 2022, they were asked to get their respective licences renewed for the month of April, 2022 as stop gap measure. Accordingly, the petitioner deposited the licence fee for the month of April, 2022 on pro-rata basis, however, the petitioner did not receive the required stock of liquor in the said month, resultantly the sale of the petitioner's shop was badly affected and it came down to 35% of the sale, causing financial loss to the petitioner. It is further submitted that the respondent No.3 vide letter No. 918 dated 25th April, 2022 informed all the Assistant Commissioners and the Superintendents of Excise that excise transport duty for the month of April, 2022 would be deducted on 28th day of April instead of 25th April. It is also submitted that Jharkhand Retailer Liquor Vendors Association represented the respondent Nos. 1 & 3 on 25th April, 2022 for considering the difficulties of liquor retail licensee being faced on account of non-availability and short lifting of stock and consequent reduced sale as well as due to deduction of the entire advance excise transport duty. Hence, the petitioner deserves refund of Rs.12,00,000/- & Rs.1,20,000/- towards security deposit in terms with Rule 31 of the Rules, 2018. Moreover, the petitioner also deserves refund of excise transport duty to the extent of Rs.12,86,056/- & Rs.1,07,100/- (ETD) and excise duty of Rs.2,26,951/- & Rs.18,900/- (ED) for which he has represented the respondent No.4 on 21st May, 2022 (Annexure-5 series to the writ petition)

respectively, however, no action has been taken on the same, which has compelled the petitioner to prefer the present writ petition.

Having heard learned counsel for the parties and considering the nature of the prayer made in the present writ petition, this Court is of the view that an appropriate decision in this regard is required to be taken by the competent authority of the State Government at the first instance. Hence, without entering into the merit of the case, the petitioner is given liberty to file a fresh representation on the present issue before the respondent No.2. On receipt of the said representation, the respondent No.2, after providing an opportunity of hearing to the petitioner/his representative, shall take an appropriate informed decision in this regard in accordance with law within six weeks from the date of filing of the said representation.

The present writ petition is disposed of with the aforesaid liberty and direction.

Satish/-

(RAJESH SHANKAR, J)