

## **M. R. Patel vs State Of Bihar And Others on 5 January, 1965**

**Equivalent citations: 1966 AIR 343, 1965 SCR (2) 693, AIR 1966 SUPREME COURT 343**

**Author: R.S. Bachawat**

**Bench: R.S. Bachawat, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, S.M. Sikri**

PETITIONER:

M. R. PATEL

Vs.

RESPONDENT:

STATE OF BIHAR AND OTHERS

DATE OF JUDGMENT:

05/01/1965

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

GAJENDRAGADKAR, P.B. (CJ)

HIDAYATULLAH, M.

SHAH, J.C.

SIKRI, S.M.

CITATION:

1966 AIR 343

1965 SCR (2) 693

ACT:

Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915), ss. 8, 35, 38 to 91-Board of Revenue-Issue of Directions-Whether could increase security deposit-Powers of Revision-If exercisable suo motu-Limitation.

HEADNOTE:

Consequent upon a direction by the Board of Revenue, Bihar, fixing the security deposit of Excise shops working under a certain system, the Commissioner of Excise directed realisation of the defecit in the security deposit of the appellant's shops. The appellant moved the Board of Revenue for revision of the Excise Commissioner's order. The Board of Revenue held that it was open to the appellant to

move the Excise Commissioner for relief. Subsequently on the appellant's motion the Excise Commissioner in supersession of his previous order, directed that in the special circumstances of the case, the security deposit in respect of the appellant's shop need not be increased. In spite of a representation made by the Deputy Commissioner, the Excise Commissioner refused to revise his order. At the request of the Deputy Commissioner the Commissioner of the Division referred the matter to the Board of Revenue. After hearing the appellant, in exercise of its powers of revision under s. 8 of the Act the Board, suo motu, set aside the order of the Excise Commissioner with the direction that until the expiry of the current licences there would be no change in the amount of security, but proper security in terms of the general directions by the Board should be demanded from the appellant at the time of the renewal of the licenses. In appeal,

HELD : (i) Neither the original order nor the subsequent order was passed by the Excise Commissioner under s. 35 on a consideration of the matters referred to in that section. The finality of s. 35 did not attach to these orders and the Board of Revenue had ample power to revise them under s. 8. [696 B-C]

(ii) On a true construction of ss. 38 and 91 of the Act, the Board in exercise of its powers under s. 38 read with s. 91 could from time to time issue general directions with regard to the conditions of any licence granted under the Act including the amount of security to be deposited by the licensee. [696 G-H]

(iii) Instruction No. 101 (10) of the Board of Revenue at p. 30 of Vol. III of the Bihar and Orissa Excise Manual 1955 Ed. read with Board's circular letter No. 8624 dated September 9, 1956 did not prevent enhancement of security at the time of the renewal of license. [697 C-D]

(iv) The Board of Revenue may exercise its powers of revision under a. 8(3) suo motu. [697 E-F]

(v) In a case where the Board exercises its power of revision of its own motion, no question of limitation arises. [697 H]

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 331 of 1962.

Appeal by special leave from the Resolution dated October 4, 1959 of the Board of Revenue, Bihar, in Case No. 124 of 1959 Rajeswari Prasad and S. P. Varma, for the appellant. C. K. Daphtary, Attorney-General, R. K. Garg, S. C. Agar-wala and D. P. Singh, for the respondents.

The Judgment of the Court was delivered by Bachawat, J. The appellant holds yearly licenses for the

retail sale of country spirit in respect of six shops in the town of Jamshedpur working under the sliding scale system under the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915) hereinafter referred to as the Act. A total sum of Rs. 11,099 was demanded and paid as security in respect of all the licenses. The original licenses in respect of the six shops were issued long ago and were renewed from year to year. By an order dated June 27, 1956, the Board of Revenue, Bihar directed that "the security deposit of an Excise shop working under the sliding scale system is hereby fixed as equivalent to two months' average license fees of the shop." The security deposit payable by the appellant on the basis of this direction would amount to about Rs. 68,000. On November 14, 1956, the Commissioner of Excise, Bihar directed the Deputy Commissioner, Singhbhum to realise from the appellant the deficit in the security deposits of his shops. This order was communicated to the appellant on December 7, 1956. On January 9, 1957, the appellant filed a petition before the Board of Revenue, praying for a revision of the order of the Excise Commissioner dated November 14, 1956. By order dated March 20, 1957, the Board of Revenue held that the merits of the appellant's case need not be examined at that stage, and observed that the order of the Excise Commissioner would constitute no bar to the appellant moving the Commissioner for considering the special circumstances, if any, of his case on merits and, for this purpose, it would be open to the appellant to move the Commissioner in an appropriate manner. Subsequently, the appellant moved the Excise Commissioner for reconsideration and setting aside of his previous order dated November 14, 1956. By his order dated March 5, 1958, the Commissioner of Excise, in supersession of his previous order, directed that in the special circumstances of the case, the security deposit in respect of the appellant's shops need not be increased and the appellant could continue to manage the shops on the existing total security of Rs. 11,099 only. In spite of a representation made by the Deputy Commissioner, Singhbhum, the Excise Commissioner refused to revise this order. On June 27, 1958, at the request of the Deputy Commissioner, Singhbhum, the Commissioner, Chotanagpur Division, referred the matter to the Board of Revenue. On April 24, 1959, the Board of Revenue directed the issue of a notice to the appellant asking him to show cause why he should not be ordered to pay the difference between the prescribed security deposit and the amount already deposited. By a petition dated July 30, 1959, the appellant showed cause. At the hearing of the case before the Board of Revenue, the appellant was represented by counsel. By an order dated October 4, 1959, the Board of Revenue, in exercise of its powers of revision under s. 8 of the Act, set aside the order of the Commissioner of Excise dated March 5, 1958, with the direction that until the expiry of the current licenses on March 31, 1960 there would be no change in the amount of security, but the proper security in terms of the general directions issued by the Board should be demanded from the licensee at the time of the renewal of the licenses, with effect from the next licensing year. The appellant now appeals to this Court from this order by special leave.

On behalf of the appellant, Mr. Rajeshwari Prasad contended that in view of S. 35 of the Act, the Board of Revenue could not under s. 8 of the Act revise the order of the Excise Commissioner dated March 5, 1958. There is no substance in this contention. Section 8 (3) provides that the Board may revise any order passed by the Excise Commissioner. Section 35 provides that the Excise Commissioner may, on a consideration of the list, objections and opinions sent to him by the Collector under s. 34, modify or annul any order passed or any license granted by the Collector, and notwithstanding anything contained in S. 8, his orders shall be final. The Excise Commissioner did not pass the order dated March 5, 1958 in exercise of his powers under s. 35, on a consideration of

the list, objections and opinions sent to him under s. 34. He passed the order in exercise of his general powers of control over the collector and the Excise Department under ss. 8 and 7(2) (a) read with S. 2(7) of the Act. During the currency of the licenses issued to the appellant for the year 1956-57, a question arose whether the additional security should be demanded from the appellant in view of the general directions issued by the Board of Revenue on June 27, 1956. By his order dated November 14, 1956, the Excise Commissioner directed that the additional security should be realised from the appellant. On a revision petition filed by the appellant under S. 8, the Board of Revenue by its order dated March 20, 1957, permitted the appellant to move the Excise Commissioner for reconsideration of his order dated November 14, 1956. On being moved by the appellant under the liberty so granted by the Board of Revenue, the Excise Commissioner by his order dated March 5, 1958 reviewed and set aside his previous order on a consideration of the general directions issued by the Board of Revenue, the Board's order dated March 20, 1957 and the special circumstances of the case. Neither the original order dated November 14, 1956 nor the subsequent order dated March 5, 1958 was passed by the Excise Commissioner under S. 35 on a consideration of the matters referred to in that section. The finality of s. 35 did not attach to these orders and the Board of Revenue had ample power to revise them under s. 8.

Mr. Prasad next referred us to S. 40 of the Act and the standard form of license for the retail vend of country spirit, and contended that only the authority granting the license could fix the amount of the security, and one of the conditions of the license was that the licensee would be required to deposit only the amount so fixed but the Board of Revenue by its order dated October 4, 1959 illegally and in excess of its powers altered the amount of the security so fixed and the corresponding condition in the license for the deposit of the amount. This argument is based on a misreading of the order of October 4, 1959, and must be rejected. By that order, the Board expressly directed that there would be no change in the amount of the security during the currency of the license. The licenses were due to expire on March 31, 1960. The Board directed that if and when the licenses were renewed with effect from the next licensing year, the proper security should be demanded from the licensee as a condition of the renewal. No exception can be taken to this direction. The licensee had no vested right to a renewal of the license. Section 45 of the Act provides that he shall have no claim to its renewal. The licensing authority was not bound to renew the license. If, in its discretion, it granted a renewal, it could require the licensee to give proper security as a condition of the renewal. On a true construction of ss. 38 and 91 of the Act it must be held that the Board, in exercise of its powers under s. 38 read with S. 91, could from time to time issue general directions with regard to the conditions of any license granted under the Act including the amount of the security to be deposited by the licensee. In exercise of its powers under ss. 38 and 91, the Board had fixed the security deposit of an Excise shop working under the sliding scale system as equivalent to two months' average license fees of the shop. The Board was entitled to direct, as it did by the order dated October 4, 1961, that the general directions issued by it under ss. 38 and 91 should be observed and carried out by the licensing authority and the proper security in accordance with those directions should be demanded if and when the licenses were next renewed.

Mr. Prasad next contended that the direction for the increase of the security at the time of the renewal of the licenses is contrary to the instruction No. 101 (10) of the Board of Revenue at p. 39 of Vol. III of the Bihar and Orissa Excise Manual, 1955 Edn. 'There is no substance in this contention.

In its order dated October 4, 1959, the Board of Revenue exhaustively reviewed all the relevant instructions issued by it from time to time, and rightly pointed out that instruction No. 101(10) read with the Board's circular letter No. 8624 dated September 9, 1956 did not prevent of the security at the time of the renewal of the licenses.

s. 8 (3) of the Act could be exercised by the Board of Revenue only on an application by an aggrieved party, and

(b) the proceedings in revision in the instant case were barred by limitation. There is no substance in these contentions. The Board of Revenue may exercise its powers of revision under s. 8 (3) suo motu. No period of limitation is prescribed by the Act for exercise of the power of revision under s. 8 (3). Mr. Prasad drew our attention to paragraph 71, Chap. V of Part HI of the Bihar Practice and Procedure Manual, 1958, pp. 99 and 100, which provides that where there is no provision of law as to the period within which an application for revision may be allowed, the application for revision should be preferred within one month of the date of the Commissioner's order deducting the time occupied in obtaining a copy of the order, but the Board has a discretion to admit the application for revision preferred after one month. In the instant case, in its order dated October 4, 1959, the Board stated that it would exercise its powers of revision suo motu. In a case where the Board exercises its power of revision of its own motion, no question of limitation arises. Moreover, the Board held that this was a fit case for interference even after the expiry of the ordinary period of limitation.

No other arguments were advanced before us. We see no reason to interfere with the Board's order. The learned Attorney-

General raised a preliminary objection as to the maintainability of the appeal on the ground that the Board is not a tribunal within the meaning of Art. 136 of the Constitution. In view of our conclusion that the appellant has no case on the merits, we do not think it necessary to express any opinion on the preliminary objection. In the result, the appeal is dismissed with costs.

Appeal dismissed.