**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

**Writ Petition (C) No. 557 of 2015**

Ashok Kumar Gupta S/o late Haridas Gupta aged about 52 years Haldibadi Chirmiri, Tahsil Khadgawan, P.S. Chirmiri, District Koriya, (Chhattisgarh)

**---- Petitioner**

**Versus**

1. State of Chhattisgarh through the Secretary, Excise Department, Mahanadi Bhawan, Mantralaya, New Raipur, (Chhattisgarh)
2. Excise Commissioner, Government of Chhattisgarh, Raipur, District Raipur, (Chhattisgarh)
3. The Collector, Koriya, District Koriya, (Chhattisgarh)
4. The District Excise Officer, Koriya, District Koriya, (Chhattisgarh)
5. Dan Tapo S/o G. Iliyas Tapo, R/o Village Baki, District Sundargarh, Orissa.

**---- Respondents**

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| For Petitioner | : | Shri Prateek Sharma, Advocate. |
| For Respondent/ State | : | Shri J.K. Gilda, Advocate General. |
| For Respondent No.5 | : | Shri Rajeev Shrivastava and Shri Malay Shrivastava, Advocates. |

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &**
**HON'BLE SHRI P. SAM KOSHY, J.**

**Order On Board**

**Per NAVIN SINHA, C.J.**

**12/5/2015**

**1.** The Petitioner assails order dated 10.03.2015 issued by the District Excise Officer, Koriya, District Koriya informing him that his name figured in the list of Excise defaulters and therefore he was ineligible to participate in the auction for Pondrihill with regard to the year 2015-2016.

**2.** We have considered the submissions on behalf of the parties.

**3.** The earlier license of the Petitioner was cancelled on 13.3.2003 before its expiry on 31.3.2003 on allegations of failure to make the necessary deposits. The Commissioner Excise upheld the same. In appeal, the Board of Revenue made a partial remand to the Excise Commissioner on 7.3.2007.

**4.** It is an admitted fact that the Petitioner never participated in any auction bid from 2003-2004 till 2014-2015. The Petitioner denied any liability for dues. The decision making process leading to the order dated 13.3.2003 was found to be procedurally flawed and hence the partial remand by the Board of Revenue to the Excise Commissioner.

**5.** The Petitioner preferred a review application before the Board of Revenue against the partial remand which was also dismissed on 4.1.2010. The pendency of the redetermination with regard to the dues owed by the Petitioner from 7.3.2007 till date cannot be attributed to the Respondents alone in the facts and circumstances of the case and we are satisfied that the Petitioner must also bear a part of the blame. Therefore in exercise of our discretionary jurisdiction under Article 226 of the Constitution of India with regard to the right to do business in liquor, we find it difficult to hold that the Petitioner stands on a clean slate and cannot be called a defaulter in any sense of the term so as to hold him fully eligible for participation by setting aside the impugned order.

**6.** The Commissioner Excise is directed to decide the liabilities of the Petitioner in accordance with the remand made by the Board of Revenue on 7.3.2007 within a maximum period of two months from the date of receipt and/ or production of a copy of this order, provided the Petitioner himself cooperates. Issues not remanded by the Board of Revenue but assailed unsuccessfully in the review jurisdiction and rejected on 4.1.2010 by the Board, in absence of any further challenge to it has attained finality.

**7.** The writ petition stand disposed and the interim order dated 31.3.2015 merges in this final order.

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| (Navin Sinha) | (P. Sam Koshy) |
| **CHIEF JUSTICE** | **JUDGE** |

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