**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15685 of 2015**

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Ashok Sah, Son of Shri Kishun Sah, resident of Mohalla-Naya Bazar Dalpatti, Ward No.-31, Lakhisarai, P.S.-Kavaiya, District-Lakhisarai.

.... .... ***Petitioner***

Versus

1. The State of Bihar though the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Lakhisarai.
4. The Superintendent of Excise, Lakhisarai.

.... .... ***Respondents***

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**Appearance :**

For the Petitioner : Mr. Satyabir Bharti, Advocate

For the Respondents : Mr. Lalit Kishore, PAAG

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**And**

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date: 29-03-2016**

An order, dated 22.09.2015, passed by the Collector, Lakhisarai, in his purported exercise of power under Section 42 of the Bihar Excise Act, 1915 (hereinafter referred to as "the Act"), whereby the licences, held by the petitioner of three liquor shops, under Group No.5, in the district of Lakhisarai, settled in favour of the petitioner, have been cancelled. The three liquor shops, settled in favour of the petitioner, and with respect to which, he held the licence, have been described as (i) Nagar Parishad, Pachna Road Retail Foreign Liquor Shop No.5, (ii) Composite Liquor Shop, Khagaur, and (iii) Composite Liquor Shop, Brindavan.

**2.** Factual matrix, unfurled on the basis of pleadings on record, are short and not much in dispute, which need to be taken note of, first, before referring to and addressing the controversy involved in the present case.

**3.** Pursuant to a sale notification for settlement of liquor shops, in the district of Lakhisarai, for the financial year 2015-16, issued by the Collector of the district, the petitioner had participated and was declared successful for settlement of Group No.5 Retail Liquor Shops, comprising (i) Nagar Parishad, Pachna Road Retail Foreign Liquor Shop No.5, (ii) Composite Liquor Shop, Khagaur, and (iii) Composite Liquor Shop, Brindavan. The licensing authority, i.e., Superintendent of Excise, Lakhisarai, had issued the licence in favour of the petitioner, on 31.03.2015, which has been brought on record by way of Annexure-2 to the writ application. On 02.05.2015, a Sub-Inspector of Excise, Lakhisarai Circle, made an inspection of Liquor Shop No.5 of the petitioner. In course of raid, 19 pieces of 200 ml. country made liquor were seized from the said foreign liquor shop. This led to institution of First Information Report, *vide* Lakhisarai (Kaviaya) P.S. Case No.317 of 2015, and arrest of two persons, namely, Jonson Kumar and Ranjit Kumar, who were present at the shop. Sale register, as required to be maintained by the licensee at the shop, was also not available at the time of the raid.

**4.** It appears that the Excise Superintendent, Lakhisarai, sought an explanation from the petitioner in the light of irregularities detected in his shop. The petitioner failed to submit his explanation, as required, within the time prescribed in the notice. The Excise Superintendent found the irregularities to be constituting breach of Clause 14 "Kha" and "Ga" of the sale notification. Clause 14 "Ga" of the said sale notification enables the competent authority, in case of breach of condition of licence in any of the shops of the group, to cancel licence with respect to all shops of the licensee within the group.

**5.** The Excise Superintendent, however, imposed upon the petitioner, a penalty of Rs.51,000/- for the said irregularities, which had been detected in the course of the said raid.

**6.** It transpires from the record that Police Inspector, Lakhisarai, while supervising the investigation of Lakhisarai (Kaviaya) P.S. Case No.317 of 2015, recommended, through Superintendent of Police, Lakhisarai, for cancellation of the licence of Retail Foreign Liquor Shop No.5 at Pachna Road. Acting on the said recommendation, the Collector, Lakhisarai, passed the impugned order, dated 22.09.2015, cancelling the licence, granted to the petitioner, with respect to abovementioned three liquor shops. He further directed the Excise Superintendent, Lakhisarai, to take steps for settlement of Group No.5 shops with the second applicant/lottery winner and till alternative arrangements were made, the Collector directed the Excise Superintendent to get the licence of the shops of the said Group cancelled with immediate effect.

**7.** The order, dated 22.09.2015, passed by the Collector, Lakhisarai, purportedly in exercise of power under Section 42 of the Act, is being assailed in the present proceeding, brought under Article 226 of the Constitution of India, on two main grounds, *viz.*, (i) the licensing authority, i.e., the Excise Superintendent, Lakhisarai, having already compounded the offence by imposing a fine of Rs.51,000/- *in lieu of suspension/cancellation of licence*, in exercise of his power under Section 68 of the Act, the Collector could not have, on the same set of allegation, passed the impugned order cancelling the licence, and (ii) the Excise Superintendent, being the designated authority/competent authority to grant or cancel a licence, the Collector, Lakhisarai, could not have exercised the power under Section 42 of the Act.

**8.** A counter affidavit has been filed on behalf of the Collector, Lakhisarai, stating therein to the effect that the Excise Superintendent wrongly passed the order, under Section 68 of the Act, in collusion with the petitioner for which a departmental proceeding is sought to be initiated against the said Excise Superintendent. It has been asserted that imposition of fine by the Excise Superintendent was highly unjust and improper. It has also been asserted that the Collector has the sanction of law to cancel the licence, which was granted to the petitioner, and that Superintendent of Excise is not the licensing authority.

**9.** We have heard Mr. Satyabir Bharti, learned Counsel, appearing on behalf of the petitioner, and Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the respondents-State of Bihar.

**10.** Mr. Satyabir Bharti, learned Counsel, appearing on behalf of the petitioner, has submitted that once the Superintendent of Excise exercised the power, vested in him under Section 68 of the Act, by compounding the alleged irregularities and violation of alleged licence, *in lieu of cancellation/suspension of licence*, the Collector, who is also vested with the same powers, could not have subsequently invoked Section 42 of the Act on the same set of irregularities, by cancelling the licence. He has submitted that the Superintendent of Excise enjoys concurrent power, as that of the Collector, in the matter of grant of licence for running a Foreign Liquor Shop and cancellation of licence or imposition of fee under Sections 20, 42 and 68 of the Act respectively.

**11.** In support of his above submission, Mr. Bharti has relied upon the rules, framed by the State Government in exercise of the power vested under Section 7 (2) (b) of the Act. Once the power came to be exercised by the delegatee, i.e., Superintendent of Excise, the Collector is bound by the decision of the delegate and he has no sanction of law to nullify the action already taken by the competent authority, under Section 68 of the Act, he has contended. He has placed reliance upon the following decisions of the Supreme Court in support of his contention, namely, ***(i) State of Orissa And Others Versus Commissioner of Land Records & Settlement, Cuttack***

***And Others,*** reported in ***(1998) 7 SCC 162, (ii) OCL India Ltd. Versus State of Orissa And Others,*** reported in ***(2003) 2 SCC 101 (iii) Roop Chand Versus State of Punjab And Another, (AIR 1963 SC 1503) and (iv) Behari Kunj Sahkari Awas Samiti Versus State of U.P. And Others,*** reported in ***(1997) 7 SCC 37***.

**12.** Mr. Bharti, learned Counsel, appearing on behalf of the petitioner, has also argued that the impugned order suffers from gross non-application of mind verging on abdication of the powers by the Collector inasmuch as the order has been passed on mere request/recommendation of the Inspector of Police, through the Superintendent of Police, Lakhisarai. Referring to Annexure-2 to the writ application, which is the licence granted in favour of the petitioner, Mr. Bharti has submitted that the Superintendent of Excise, having granted licence to the petitioner, is the licensing authority and, therefore, the power, under Section 42 of the Act, to cancel the licence could be exercised by him only. Relying on Section 42 of the Act, he has contended that power to cancel the licence, conferred under the Act, is on *"the authority, who granted the licence"*. In support of his submission, he has heavily relied upon a Division Bench decision of this Court in ***M/s Welcome Distillery Pvt. Ltd. Versus The State of Bihar through***

***Secretary, Excise & Ors.,*** reported in ***2015 (1) PLJR 609***. He has also submitted that the Collector had acted purely on the basis of suggestion of the police for cancellation of licence of the petitioner, in relation to one Shop of Group No.5 of Nagar Parishad, Pachna Road, and had issued show cause notice to the petitioner for cancelling licence with respect to that shop only. He, accordingly, argues that the Collector cancelled the licence of other two shops also and forfeited the deposits, which were not mentioned in the show cause notice, and, therefore, the impugned action of the Collector in cancelling the licence is in violation of principles of natural justice.

**13.** Mr. Bharti, learned Counsel, has also contended that the powers of compounding, *in lieu of cancellation of licence*, under Section 68 of the Act, by the licensing authority, for violation of licence conditions simplicitor, have been exercised on various occasions, even by the Collector, Lakhisarai, who has passed the impugned order. Mr. Bharti has relied upon certain orders, passed by the Collector, in this regard, which have been brought on the record by way of Annexure-12 series and Annexure-13 to the petitioner's rejoinder to the counter affidavit and in the supplementary affidavit filed in the present proceeding.

**14.** Applying the *doctrine* of *contemporanea* *expositio*, in support of his above submission, Mr. Bharti has relied upon following decisions of the Supreme Court:- ***(i) Nair Service Society Versus Dr. T. Beermasthan And Others,*** reported in ***(2009) 5 SCC 545 (ii) S.B. Bhattacharjee Versus S.D. Majumdar And Others,*** reported in ***(2007) 10 SCC 513 and (iii) K.P. Varghese Versus Income Tax Officer, Ernakulam And Another,*** reported in ***(1981) 4 SCC 173***. He has also placed reliance upon a Division Bench decision of this Court in ***Ambika Prasad Versus State of Bihar And Others***, reported in ***1967 (15) BLJR 434*** to contend that powers conferred upon Superintendent of Excise to accept fine, *in lieu of cancellation/suspension of licence*, is well recognized.

**15.** Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the respondents-State of Bihar, has, on the other hand, submitted that Section 68 of the Act, which provides for compounding of offences by payment of sum of money, in lieu of cancellation/suspension or by way of composition, has no application, if there is any breach by the holder of the licence or any person, acting on his behalf with his express or implied permission, of any of the terms or conditions of the licence. He has referred to Clause (c) of Section 42 (1) of the Act, read with Section 68, and has contended that Clause (c) of Section 42 (1) of the Act is conspicuously absent in Section 68 of the Act and had it been the intention of the Legislature that breach of conditions of licence, which is a ground occurring in Clause (c) of Section 42 of the Act, could be also compoundable under Section 68 of the Act, the same ought to have been mentioned in Section 68 of the Act itself.

**16.** He has submitted that irregularities, detected in course of raid of the petitioner's shop, were in the nature of breach of terms and conditions of licence inasmuch as the licence was issued subject to specific condition that the licensee would not sell, under the colour of this licence, *"any country made spirit"*. He contends that the licensee having violated the terms of the licence, cancellation of licence was the only consequence and the Superintendent of Excise had no authority to levy fine in lieu of cancellation of licence.

**17.** It is the submission of Mr. Lalit Kishore, learned Principal Additional Advocate General, that the rules, framed by the State Government, under Section 7 (2) of the Act, though confers upon the Excise Superintendent such powers, which are vested in the Collector under Section 68 of the Act, yet the same are only with respect to *"composition of offences and release of property, liable to* *confiscation"* and no more.

**18.** Mr. Lalit Kishore, learned Principal Additional Advocate General, accordingly submits that the order, passed by the Superintendent of Excise, dated 26.05.2015, imposing penalty, *in lieu of cancellation*, was, being without jurisdiction, a nullity in the eyes of law and, therefore, there is no illegality in the subsequent order, passed by the Collector, cancelling the licence, which is impugned in the present proceeding. Mr. Lalit Kishore, learned Principal Additional Advocate General, further submits that it is not clear from the order passed by the Superintendent of Excise, as to whether he imposed the said penalty in lieu of cancellation of licence or in lieu of composition of offences or both and, therefore, the said order is a nullity in the eye of law.

**19.** Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the respondents-State of Bihar, further contends that in any event, the impugned order, passed by the Collector, need not be interfered with in the present proceeding under Article 226 of the Constitution of India inasmuch as it will amount to restoration of an illegal order passed by the Superintendent of Excise. In support of this submission, Mr. Lalit Kishore, learned Principal Additional Advocate

General, has placed reliance on *(i)* ***Gadde Venkateswara Rao Versus Government of Andhra Pradesh And Others, (AIR 1966 SC 828)*** and *(ii)* ***Baldeo Prasad Versus Bhola Nath And Others**,* reported in ***AIR 1960 PATNA 339***.

**20.** Mr. Lalit Kishore, learned Principal Additional Advocate General, has further contended that the petitioner has alternative remedy of appeal/revision against the order of the Collector and this Court is, therefore, not required to entertain this application, presented under the extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India.

**21.** Mr. Lalit Kishore, learned Principal Additional Advocate General, drawing our attention to the order passed by the Superintendent of Excise, dated 26.05.2015, wherein he has mentioned the conditions, contemplated under Clause 14 "Ga" of the said notification, which, according to him (Superintendent of Excise), was violated by the petitioner in view of the nature of the irregularities detected, submits that imposition of penalty by the Excise Superintendent cannot be said to be not *in lieu of cancellation of licence*.

**22.** Before we proceed to advert to the facts, statutory provisions and the submissions advanced on behalf of the parties, we have no hesitation in recording that mentioning of Clause 14 "Kha" in the order, dated 26.05.2015, passed by the Superintendent of Excise, Lakhisarai, is an innocuous typographical error and "Kha" appears to have been wrongly typed in place of "Ga" in the said order.

**23.** We will, now, be taking note of the statutory provisions, which are relevant for adjudication and consideration of rival submissions made on behalf of the parties.

**24.** The Bihar Excise Act, 1915, governs import, export, transport, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs. Chapter II of the Act provides, *inter alia*, for establishments and delegation and withdrawal of powers under the Act. The administration of the Excise Department and the collection of the excise revenue, within a district, is, ordinarily, under the charge of the Collector of the district as contemplated under sub-Section 1 of Section 7 of the Act. Under Section 7 (2) (b) of the Act, the State Government may, by notification, appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under the Act, subject to such control as the State Government may direct. Section

7 (2) (b) and Section 7 (2) (c) of the Act, being relevant, are reproduced hereinbelow:-

> *"**7. Establishments and delegation and withdrawal of powers.–** (1) x x x x x x x x*
>
> *(2) The State Government may by notification applicable to the whole of the State or to any specified local area.–*
>
> *(a) x x x x x x x x*
>
> *<u>(b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under this Act, subject to such control as the State Government may direct;</u>*
>
> *<u>(c) appoint officers of the Excise Department of such classes, and with such designation, powers and duties as the State "Government may think fit;</u>*
>
> *(d) x x x x x x x x*
>
> *(e) x x x x x x x x*
>
> *(f) x x x x x x x x*
>
> *(g) x x x x x x x x"*

(<u>Emphasis mine</u>)

**25.** Section 20 of the Act prohibits sale of intoxicant except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector. As has been noted above, functions and duties of the Collector, prescribed under the Act, can be exercised by a person, other than Collector, if such a person is authorized, under Section 7 (2) (b) and (c) of the Act, by the State Government by a notification.

**26.** In the case at hand, the State Government has issued notification, as contemplated under Section 7 (2) (b) and (c) of the Act, which reads thus:-

> *"There shall be in every district an Assistant Commissioner of Excise <u>or a Superintendent of Excise</u> or both who shall, in subordination to the Collector, and subject to the general control of the Excise Commissioner, <u>exercise in the said district all the powers and perform all the duties conferred and imposed on the Collector by the provisions of the Act specified below</u>:-*
>
> *(a) x x x x x x x x*
>
> *(b) x x x x x x x x*
>
> *(c) x x x x x x x x*
>
> *(d) x x x x x x x x*
>
> *(dd) section 20-(grant of licenses for sale of [intoxicant),*
>
> *(e) x x x x x x x x*
>
> *(f) x x x x x x x x*
>
> *(g) x x x x x x x x*
>
> *(h) section 68–(composition of offences and release of property liable to confiscation)."*
>
> *(<u>Emphasis supplied</u>)*

**27.** Section 42 of the Act deals with the power to cancel or suspend a licence or impose penalty by the authority, who granted a licence, under certain circumstances as mentioned therein. Those conditions are mentioned in Clause 42 (1) (a - h) of the Act. Clause (c) of Section 42 (1) of the Act refers to a situation, where there has been a breach of condition of licence, as a ground for cancellation of licence under Section 42 of the Act. Section 42 (1) of the Act is being reproduced hereinbelow:-

> "***42. [Power to cancel suspend license, permit or pass, or impose penalty.–****(1)-["subject to restrictions as the State Government may prescribe the authority who granted any licence, permit or pass under this Act may cancel, suspend it or impose penalty.".*
>
> *(a) if it is transferred or sublet by the holder thereof be not duly paid; or*
>
> *(b) if any duty or fee payable by the holder thereof be not duly paid; or*
>
> *(c) in the event of any breach by the holder thereof, or by any of his servants, or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or*
>
> *(d) if the holder thereof is convicted of any offence punishable to revenue under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-*

*bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930 (2 to 1930) or under the Merchandise Marks Act, 1889 (4 of 1889), or under other section which has been introduced into the Indian Penal Code by section 3 of that Act; or*

*(e) if the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878 (8 of 1878); or*

*(f) where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22-on the requisition in writing of such holder; or*

*(g) if the conditions of the licence, permit or pass provide for such cancellation or suspension at will.*

*(h) (i) for breach of such conditions of licence, which caused loss of revenue to the State (including Excise duty, other admissible fee, Sales tax etc.) in addition to the total amount of loss on equal amount shall be imposed as penalty.*

*(ii) Penalty of two hundred percent of loss of revenue shall be imposed for susbsequent economic offence committed under clause (h)(i) of the said sub-section (1).*

*(2) When a licence, permit or pass held by any persons is cancelled*

*under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1), the authority aforesaid may cancel any other licence, permit or pass granted to such person by, or by the authority of the State Government under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878 (1 of 1878).*

*[(3) When a licence, permit or pass is liable to be cancelled, it may, at the discretion of the authority who granted the same, be suspended for a period of ninety days at a time, provided the authority concerned may extend the period of suspension beyond ninety days under exceptional circumstances, after recording reasons for the same.]*

*(4) The holder of a licence, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof."*

**28.** Section 68 of the Act enables the Collector or any Excise Officer, specially empowered by the State Government in this behalf, not below the rank of Deputy Collector or Superintendent of Excise, to accept from any person, whose licence is liable to be cancelled or suspended, payment of a sum of money, minimum

Rs.1,000/- and maximum of Rs.1,00,000/-, depending upon quantum of evasion or repetition of breach, *in lieu of such cancellation, suspension or by way of composition for such offence, as the case may be*.

**29.** Interpretation of Section 68 of the Act, being also at the core of controversy, is being quoted hereinbelow:-

> *"**68. Power to compound offences and to release property liable to confiscation.–**(1) The Collector or any Excise Officer specially empowered by the State Government in this behalf, not below the rank of Deputy Collector or Superintendent of Excise–*
>
> *[(a) may subject to any restriction imposed by any rules made under clause (k) of Section 89 accept from any person whose licence, permit or pass is liable to be cancelled suspended or imposed penalty on economic offence under clause (a), clause (b), clause (d), clause (e), clause (f), clause (g), and clause (h) of Section 42 or who is reasonably suspected of having committed an offence punishable under any section of this Act other than Section 61, payment of a sum of money minimum rupees one thousand and maximum Rupees One lac, depending on quantum of evasion or repetition of breach in lieu of*

*such cancellation, suspension or by way of composition for such offence, as the case may be."*

*(b) in any case in which any property has been seized as being liable to confiscation under section 66, may, at any time before the Magistrate has passed an order under section 67, sub-section (1) release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer.*

*(2) When the payments referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released, and no further proceedings shall be taken against such person or property."*

**30.** The issues and the questions, which have emerged, for determination in the present case, in the background of the admitted facts, as noticed above, and also in the light of the statutory provisions under the Bihar Excise Act, 1915, and the Rules framed thereunder, are as follows:-

***(i)*** Whether the Superintendent of Excise, Lakhisarai, being the authority, who had granted licence for sale of liquor in favour of the petitioner, alone, had the power to cancel, suspend or impose penalty on the ground of existence of any of the conditions prescribed under Section 42(1) of the Act and no other authority could have exercised such power?

***(ii)*** Whether the order, dated 26.5.2015, passed by the Superintendent of Excise, Lakhisarai, imposing find of Rs. 51,000/- in relation to irregularities detected in course of raid laid on 2.5.2015, is an order imposing penalty under Section 42 of the Act or is an order of penalty enforced by invoking the provisions of Section 68 of the Act?

***(iii)*** Whether the Collector, Lakhisarai, had the authority to pass the subsequent order, dated 22.9.2015, impugned in this application, cancelling the licence held by the petitioner for the aforesaid shops and forfeiting security and advance licence fees, if deposited by the petitioner against grant of the said licence, without annulment of the order of the Superintendent of Excise, dated 26.05.2015, in accordance with law?

***(iv)*** Whether the Superintendent of Excise had the authority and jurisdiction, under Section 68 of the Act, to accept money, *in lieu of cancellation/suspension of licence and compound* *offence*, under Section 68 of the Act, in the absence of any mention of Clause (c) of Section 42 (1) in Section 68 of the Act';

***(v)*** If the Superintendent of Excise had the jurisdiction to pass appropriate order, under Section 68 of the Act, and he had exercised his power by issuing order, dated 26.05.2015, was it permissible for the Collector, Lakhisarai, to have passed the impugned order, dated 22.09.2015, cancelling the licence of the petitioner, without getting over the earlier order passed by the Superintendent of Excise, dated 26.05.2015.

**31.** We will be required to deal with Issues No. (iv) and (v), as aforesaid, only if it is held that by issuing the order, dated 26.5.2015, the Superintendent of Excise, Lakhisarai, invoked provisions of Section 68 of the Act.

**32.** We will take up Issue No. (iii) first, since it relates to the very authority of the Collector to pass an order, cancelling the licence of the petitioner in exercise of power under Section 42 of the Act.

**33.** Section 42 of the Act enables the authority, who granted any licence, permit or pass under the Act to cancel or suspend or impose penalty in the event of existence of any of the circumstances enumerated from

(a) to (h) of Section 42(1) of the Act. This power of cancellation, suspension or imposition of penalty is vested in that authority only, who had granted the licence, in the event of any breach by the holder of licence of any of the terms or conditions of the licence.

**34.** Interpretation of Section 42 of the Act had fallen for consideration before a Division Bench of this Court in the case of ***M/s Welcome Distillery (P) Ltd. v. the State of Bihar***, reported in ***2015(1) PLJR 609***, wherein the Division Bench has clearly held, in paragraph 15, that no authority, other than the one, who granted the licence, can suspend or cancel the licence. In the case of ***M/s Welcome Distillery (P) Ltd.*** (supra), the Collector had granted the licence and, therefore, the Court held that it was the Collector alone, who could have taken action of cancellation of licence. In the present case, the licence was, admittedly, granted by the Superintendent of Excise, Lakhisarai.

**35.** Following the Division Bench decision in the case of ***M/s Welcome Distillery (P) Ltd.*** (supra), we have no hesitation in holding that it was the Superintendent of Excise, Lakhisarai, alone, who could have taken action of cancellation of licence of the petitioner. The Collector, Lakhisarai, has, thus, acted beyond jurisdiction by issuing the impugned order of cancelling the licence. This is more so, when the Superintendent of Excise had already exercised his power as a licensing authority under Section 42(1) of the Act.

**36.** It has been vehemently argued by Mr. Lalit Kishore, learned Principal Addl. Advocate General, that even if the order of the Collector is held to be illegal, it should not be interfered with inasmuch as this will lead to revival of an illegal order passed by the Superintendent of Excise invoking Section 68 of the Act by accepting money in lieu of cancellation/ suspension of licence, though the Superintendent of Excise did not have such a power under Section 68 of the Act.

**37.** We will, therefore, now, examine the jurisdiction of the Superintendent of Excise to pass the order, dated 26.5.2015, whereby penalty of Rs. 51,000/- has been imposed for breach of terms or conditions of licence as listed in Section 42(1)(c) of the Act. On perusal of the order, dated 26.5.2015, passed by the Superintendent of Excise, Lakhisarai, we find that it does not refer to invocation of Section 68 of the Act. It has been mentioned in the said order that on the date, when raid was conducted in Shop No.1, 19 bottles, each containing 200 ml. of country made liquor, was found and no sale register was maintained in Shop No.2. An explanation was sought for from the petitioner and since he did not respond, the Superintendent of Excise imposed upon the petitioner the fine of Rs. 51,000/-, which the petitioner is said to have deposited.

**38.** It is the case of the State of Bihar that the Superintendent of Excise, Lakhisarai, could not have imposed penalty for breach of terms and conditions of licence, as contemplated under Clause (c) of Section 42(1) of the Act, because it amounts to accepting money in lieu of cancellation, suspension under Section 68 of the Act. According to Mr. Lalit Kishore, learned Principal Additional Advocate General, since compounding, in terms of Section 68 of the Act, is not permissible for an offence, if committed, under Clause (c) of Sub-section (1) of Section 42, it was not within the jurisdiction of the Superintendent of Excise to have passed the said order, dated 26.5.2015. According to the learned Principal Additional Advocate General, the order, dated 26.05.2015, is collusive. We may hasten to add that there has not been an iota of material to show any collusion between the Superintendent of Excise and the present petitioner. In the absence of any such specific material brought on record, the allegation of collusion cannot be perpetuated.

**39.** On bare perusal of Section 42 of the Act, it is easily discernible that the authority, who has granted any licence, permit or pass under the Act, has, in the case of breach on the part of the licensee as enumerated in Clause (a) to (h) including Clause (c), the jurisdiction to (i) cancel, (ii) suspend or (iii) impose penalty. The authority, who granted the licence, could have either cancelled or suspended the licence or imposed penalty on the petitioner for breach of terms or conditions of the licence in accordance with law. The Superintendent of Excise, in the present case, decided to impose penalty for the alleged breach of conditions of licence in exercise of his power under section 42(1) of the Act.

**40.** In our considered view, the order, dated 26.5.2015, passed by the Superintendent of Excise, Lakhisarai, need not be treated to be an order under Section 68 of the Act. It has been submitted by Mr. Lalit Kishore, learned Principal Additional Advocate General, that in substance, the said order, dated 26.5.2015, amounts to invoking provisions of Section 68 of the Act. The expression, which has been used by the Superintendent of Excise in the order, dated 26.5.2015, is "*Aniyamitata Shulk*" for imposition of penalty/ fine to the tune of Rs. 51,000/-. If the contention, as advanced on behalf of the State of Bihar, is accepted, the competent authority will stand denuded of its power to impose penalty for breach of terms or conditions of licence by the holder thereof and cancellation/ suspension of licence will be only option left. This interpretation would lead to apparent absurdity inasmuch as the competent authority can either cancel or suspend or impose penalty, for the situations mentioned in Clause (a), (b), (d), (e), (f), (g), (h); whereas, for Clause (c), i.e., in the event of breach of terms or conditions of licence, howsoever minor that may be, cancellation or suspension of licence will be the only consequence.

**41.** We cannot lose sight of the fact, which has not been disputed, that the Excise officials in the State of Bihar, including the Collector, Lakhisarai, have passed orders, imposing penalty against the licensees in case of breach of the terms and conditions of the licence. Secondly, the order, passed by the Superintendent of Excise, dated 26.05.2015, has so far not been upset by a competent authority.

**42.** In our opinion, thus, the order, dated 26.5.2015, passed by the Superintendent of Excise, Lakhisarai, is in effect an order imposing penalty exercising power under section 42 of the Act.

**43.** Situated thus, we hold that a licence, granted under the Act, can be cancelled under Section 42 of the Act by the authority, who had granted the licence and no other authority has such jurisdiction. In the present case, since the licence was granted by the Superintendent of Excise, Lakhisarai, it was the Superintendent of Excise alone, who could have invoked power of cancellation/ suspension of licence. This is because of the expression used in Section 42 "authority, who granted any licence" and not any licensing authority. We must make it clear that under the Scheme of the Act, the Collector is the licensing authority. In exercise of Rule-making power, the State Government have framed Rules. It is not in dispute that the Superintendent of Excise, under the said Rules, has been vested with several powers exercisable by the Collector by virtue of various provisions of the Act including the power of granting of licence for sale of intoxicant under section 20 of the Act.

**44.** The Superintendent of Excise, thus, is a statutory authority, having power to grant licence for sale of liquor. In exercise of such statutory power, the Superintendent of Excise had granted licence in favour of the petitioner. This fact, considered in conjunction with Section 42 of the Act, takes us to the lone and only conclusion that the Superintendent of Excise, in the present case, alone was the competent authority, who could have exercised the power of suspension/ cancellation/ imposition of penalty and, who, in fact, exercised his power by making the order, dated 26.05.2015, aforementioned. This order cannot be said to be beyond his jurisdiction, which, in effect, amounts to imposition of penalty by him as contemplated under Section 42 of the Act.

**45.** In any event, the Collector, Lakhisarai, had no jurisdiction to pass the impugned order, dated 22.9.2015, cancelling the licence held by the petitioner. The order of Superintendent of Excise, dated 26.5.2015, is not an order under Section 68 of the Act; rather it was an order imposing penalty under Section 42 of the Act.

**46.** We, accordingly, set aside and quash the order, dated 22.9.2015, passed by the Collector, Lakhisarai, cancelling the licence held by the petitioner for liquor shops falling in Group-5 and direct the respondents to restore forthwith the licence held by the petitioner for the aforesaid shops. Consequences of quashing of the impugned order, dated 22.09.2015, shall follow.

**47.** This application is allowed, accordingly.

**48.** Before we part with this judgment, we make it clear that we have not gone into the other issues and submissions advanced on behalf of the petitioner and the respondents pertaining to power of competent authority under Section 68 of the Act to accept money *in lieu of cancellation or suspension of licence* for breach as envisaged in Clause (c) of Section 42 (1) of the Act inasmuch as these issues have become, in our opinion, academic in nature for the purpose of present adjudication.

**(Chakradhari Sharan Singh, J.)**

**I. A. Ansari, ACJ.** :- I agree

**(I. A. Ansari, ACJ.)**

Praveen-II/-

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