IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20706 of 2014

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1. M/s Rawati International Pvt. Ltd., Biscomaun Colony, P.S. Alamganj Town, District Patna through its Director Jitendra Prasad Singh , S/o Late Ram Pratap Singh, Dharhara Kothi, P.S. Saidpur, District Patna.

.... *Petitioner/s*

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Joint Commissioner Excise, Bihar, Patna.
4. The Superintendent of Excise, West Champaran, Bettiah.
5. The Collector, West Champaran, Bettiah.
6. Bihar State Beverage Corporation Limited, Vidut Bhawan, Bailey Road, Patna.

.... *Respondent/s*

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Adv.
Mr. Harsh Singh, Adv.

For the Respondent/s : Mr. Lalit Kishore, PAAG, Sr. Adv.
Mr. Bishwa Bibhuti Kumar Singh, Adv.

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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: 23-06-2016

This application, under Article 226 of the Constitution of India, has been filed seeking issuance of writ, in the nature of writ of *certiorari*, quashing the order, dated 02.05.2013, passed by the Collector, West Champaran, Bettiah, whereby in exercise of power, under Section 42 (b) of the Bihar Excise Act, 1915 ***(hereinafter referred to as the 'Act')***, he has directed the petitioner to deposit a sum of Rs.2,40,55,236/- by way of duty and equivalent amount of Rs.2,40,55,236/- by way of penalty, after having held the petitioner guilty of supplying country liquor of weaker strength and lesser quantity than prescribed, as per the chemical examination report of the samples, collected from Bihar State Beverage Corporation Limited ***(hereinafter referred to as the 'BSBCL')***, Bettiah, in the months of January, February and March, 2012, and from Gopalganj, in the months of October and November, 2011. The order, dated 20.02.2014, passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, on revision application, filed by the petitioner against the order, dated 02.05.2013, which had given rise to Case No.24 of 2013 – district West Champaran, dismissing the said revision application, is also under challenge.

2. The Chairman-cum-Member, Board of Revenue, Bihar, Patna, by his impugned order, dated 20.02.2014, while upholding the finding arrived at by the Collector, West Champaran, Bettiah, that the country liquors supplied by the petitioner was not of required strength and quantity, but observed that basis for calculation of revenue loss had not been explained in the order of the Collector. He has, accordingly, directed the Collector to take legal steps to realize the loss of revenue after serving on the petitioner the detailed calculation on the basis of which he arrived at the said conclusion.

3. The petitioner had filed an application, seeking review of the order, dated 20.02.2014, which had given rise to Case No.8 of 2014, before the Board of Revenue, Bihar, Patna, which came to be dismissed by an order, dated 24.04.2014, on the ground that there was no provision, under the said Act, for review of an order passed.

4. We have heard Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the petitioner, and Mr. Lalit Kishore, learned Principal Additional Advocate

General, who represented the State of Bihar.

5. Facts, which are not in dispute, are that the petitioner is a private limited company and was granted exclusive privilege for manufacturing and supplying of country liquor to BSBCL, West Champaran, Bettiah, for the period 01.07.2009 to 31.03.2012, which was subsequently extended up to 30.11.2012. The said privilege was subsequently extended to the petitioner-company for the district of Gopalganj, as well. This is not in dispute that the petitioner-company was the sole manufacturer and supplier of country liquor for the districts of West Champaran and Gopalganj. In terms of the conditions of licence, the petitioner-company was required to manufacture country liquor, packaging thereof in sachets, either of 200 ML or 400 ML, while adhering to the strength of 60° UP (Rule 22(1) of the Bihar Country Liquor Bottling Rules, 2004). The liquor in sachets was to be supplied from the warehouse of the company to the BSBCL, in the district of West Champaran.

6. It transpires from the pleadings and material on record that certain samples of sachets, relating to the months of January, February and March, 2012, were collected from the warehouse of the Corporation at Bettiah and were sent to the Excise Chemical Examiner, for its chemical examination, who submitted his report, on 27.03.2012, with a finding that the samples of the sachets were of sub-standard quality. The similar was the situation on examination of the samples taken from the Corporation's warehouse at Gopalganj. As has been noticed at the very outset, the petitioner-company had the exclusive privilege for manufacturing and supplying of country liquor to the Corporation in West Champaran. After having received the report, the same was forwarded to the District Magistrate, Bettiah, by the Deputy Commissioner, Excise, EIB, Bihar, Patna, through is letter No.2167, dated 24.04.2012, with an instruction to take appropriate action, under Section 42(1) (h) of the Act. Section 42(1) (h) of the Act reads thus:-

> "(a) x x x x x x x
> (b) x x x x x x x
> (c) x x x x x x x
> (d) x x x x x x x
> (e) x x x x x x x
> (f) x x x x x x x
> (g) x x x x x x x
> (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 subsequent economic offence committed under clause (h)(i) of the said sub-section (1)."

7. Subsequently, the Joint Commissioner, Excise, through his letter No.4112, dated 30.08.2012, forwarded the said enquiry report to the Collector, West Champaran, Bettiah, with an instruction to take appropriate action in accordance with the provisions of Section 42 (1) (h) of the Act.

8. Acting upon the said enquiry report, the District Magistrate, Bettiah, issued a common show cause notice to the petitioner-company, through his letter No.2582, dated 02.11.2012, asking him to submit his explanation as to why for supply of country liquor of weaker strength and in quantity less than the prescribed standard, an order be not made for recovery of the loss of revenue caused to the Corporation and penalty of equivalent amount be not imposed. Along with the said show cause notice, dated 02.11.2012, the aforementioned communications, the departmental letter, dated 24.04.2012, and report of the Excise Chemical Examiner, dated 27.03.2012, were shown to have been annexed.

9. An explanation was, thereafter, submitted by the Director of the petitioner-company in response to the said show cause notice, dated 02.11.2012.

10. It appears from the reply to the show cause notice that the petitioner-company had made a request to supply copies of the letters, bearing Nos.2167, dated 24.04.2012, 624, dated 27.03.2012 (report of the Excise Chemical Examiner) and letter No.38/2012, mentioned in the said show cause notice. It was pointed out in the said reply that despite request having been made, the aforesaid letters were not supplied to the petitioner-company. Plea was, accordingly, taken that non-furnishing of the said documents amounted to violation of the principles of natural justice. The petitioner-company asserted that the samples, which were taken for chemical examination, were not supplied by him and there was no material to show that the samples, so collected from the Depot of the Corporation, were supplied by the petitioner-company. A plea was, accordingly, taken that the onus of proving that the samples were supplied by the petitioner-company was heavy on the Excise officials.

11. A plea was also taken that in compliance of the instructions of the Board of Revenue, contained in paragraph 217-A to 249 and Rules 44 to 62 of the Bihar Country Liquor Bottling Rules, 2004, framed under Section 90 of the Excise Act, supplies were made to the Corporation under the supervision of Superintendent/Inspector of Excise. Special reference has been made to an instruction No.235, which provides that the movement consignment of spirit arrives at a warehouse, it is immediately examined, measured and tested by the Superintendent of Excise, Sub-Divisional Officer, Sub-Deputy Collector or other officer duly empowered in this behalf by the Collector in writing. According to the petitioner-company, warehouse is kept under a key, which is kept with an officer, not below the rank of Inspector or Officer-in-Charge of the distillery, under whose presence, the liquor is reduced. Referring to Rule 46 of the Rules, framed under Section 90 of the Act, it was contended that no spirit could be issued from a warehouse except under a pass with and the containers, containing the spirit bearing the ticket showing the quantity of spirit therein and strength thereof. The petitioner-company, accordingly, took a plea that the samples were tested time and again by the officers in the warehouse of the company and if the strength of the liquor of the samples, collected from BSBCL Depot, was found to be weak or less in quantity, the petitioner-company could not be faulted with it at all. It was also pleaded that the samples of the country liquor of the warehouse had been examined on several occasions and the Excise officials did not find any discrepancy, regarding strength and quantity.

12. A plea was also taken that the samples, in question, were collected on 10.02.2012, which came to be examined by the Excise Chemical Examiner, Bihar, only on 27.03.2012, showing discrepancies in the samples. There is no explanation for delay of more than one month in getting the samples examined and, therefore, the question of tampering with the samples could not be ruled out. The petitioner-company took a specific plea that opening and closing stock, as on 10.02.2012, is the same, which means that no samples had been collected from the Corporation at all, but have been implanted *mala fide* for harassing the petitioner. Referring to Section 69 of the Act, and the Bihar Country Liquor Bottling Rules, 2004, it was contended by the petitioner-company that power to enter, inspect and power to test, seize and measure lies only with the Excise Commissioner or the Collector or any other Excise official, not below the rank as specified by the State Government.

13. The show cause reply, so submitted by the petitioner-company, was not found to be satisfactory by the Collector, West Champaran, Bettiah. The Collector refused to accept the plea that the samples taken, for the purpose of examination, were not supplied by the petitioner. Assigning reason for the said rejection, the Collector in his order, dated 02.05.2013, recorded that the petitioner-company had the exclusive privilege of manufacturing and supplying of country liquor and said supplies were to be made to the Depots of the Corporation only. Since there could be no other person, who supplied country liquor to the Corporation, the plea that the samples were not supplied by the petitioner-company could not be accepted. Rejecting the plea that since before supply of country liquor to the Corporation, due verification of samples is done by the Excise officials in the warehouse of the petitioner-company, there could be no reason to believe that the samples collected from the Corporation would be containing country liquor of weaker strength and less in quantity; the Collector, West Champaran, Bettiah, observed that at the time of inspection in the warehouse of the petitioner-company, some samples might have been found up to the mark, but that only will not be proof of the fact that the entire materials supplied by the petitioner-company were of the desired standard and quantity. The Collector, West Champaran, Bettiah, rejected the plea taken by the petitioner-company that under the extant rules, only Excise Commissioner, Collector and Excise officials were competent to collect the samples for the purpose of examination and no other person could do the same. The plea that the petitioner-company ought to have been supplied the samples of country liquor, so collected, which were sent for chemical examination, was also rejected by the Collector, West Champaran, Bettiah, and, accordingly, by impugned order, dated 02.05.2013, he held the petitioner-company responsible for not supplying the country liquor of the desired strength and quantity and, in exercise of power, under Section 42 (1) (h) of the Act, he held that because of illegalities committed by the petitioner, the State had to suffer revenue loss to the tune of Rs.2,40,55,236/-. He, accordingly, directed the petitioner-company to compensate the loss by depositing the said amount of Rs.2,40,55,236/-. He also imposed a penalty of equivalent amount, i.e. Rs. 2,40,55,236/-. Both amounts were directed to be deposited in the Bettiah Treasury.

14. Aggrieved by the said order of the Collector, West Champaran, Bettiah, the petitioner-company preferred a revision application before the Board of Revenue, Bihar, Patna, which gave rise to Case No.24 of 2013. Upon considering the materials on record and submissions advanced on behalf of the parties, the Chairman-cum-Member, Board of Revenue, Bihar, Patna, recorded that the impugned order of the Collector, West Champaran, Bettiah, did not require any interference except that the said order did not contain calculation of the revenue loss, which the petitioner-company was required to make good, by the impugned order. He, accordingly, while upholding the order of the Collector, asked him to serve upon the petitioner-company, the detailed calculation on the basis of which he arrived at the quantum of loss.

15. The petitioner-company had preferred a review application, seeking review of the order, dated 20.02.2014, passed in Case No.24 of 2013, which was dismissed by an order, dated 24.04.2014.

16. These are the orders, which have been challenged in the present proceeding.

17. So far as dismissal of review application by the order, dated 24.04.2014, is concerned, the petitioner-company has himself admitted that filing of the review application itself was wrong. The order, dated 24.04.2014, in my considered view, cannot be said to be an illegal order, requiring interference by this Court.

18. Coming now to the order-in-original and the order passed by the revisional authority, it is the case of the petitioner-company that the Commissioner and Joint Commissioner of the Excise Department, Government of Bihar, being superior authority had already pre-judged the petitioner's guilt *ex-parte* and the Collector, West Champaran, Bettiah, acted under the dictates of the officials and, therefore, the impugned order, passed by the Collector, is vitiated for having been passed without application of independent mind. It has also been pleaded in the writ application, as was pleaded in the show cause reply, that during the inspections, carried out by the Excise Superintendent, West Champaran, at the warehouse of the petitioner-company, no discrepancy of any nature was found with regard to strength of the country liquor. A plea has also been taken that the samples are said to have been taken on 10.02.2012, but there is no difference in the opening and closing stocks on 10.02.2012, which is evident from the daily stock register. It has been asserted in paragraph 10 of the writ application that the alleged samples have been implanted for ulterior reasons, *mala fide,* for harassing the petitioner-company. It has also been pleaded that the report of the Chemical Examiner has been prepared on the basis of samples of country liquor allegedly taken from the Depot of the Corporation of BSBCL, situated at Bettiah and Gopalganj. However, the samples remained unsupplied to the petitioner-company and no enquiry whatsoever was made by the Excise officials to ascertain as to whether the samples, so collected from BSBCL, were, in fact, supplied by the petitioner-company. According to the petitioner-company, there is no proof whatsoever that the samples were supplied by him.

19. The petitioner-company has asserted in paragraph 5 of the writ application that letters, referred to in the show cause notice, were not supplied to him along with the said notice and were subsequently supplied when the petitioner raised an objection to this effect.

20. Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the petitioner-company, has placed heavy reliance on a Division Bench decision of this Court, dated 15.09.2015, passed in C.W.J.C. No.21965 of 2014 ***(M/s Spicy Beverage Pvt. Ltd. Vs. The State of Bihar & Ors.)***. In case of ***M/s Spicy Beverage Pvt. Ltd.*** (supra), the samples were taken and recoveries were made from the warehouse as well as retail shops. The samples collected from the warehouse, in case of ***M/s Spicy Beverage Pvt. Ltd.*** (supra), were found to be fulfilling the desired standard, whereas the samples collected from the retail shops were found to be lacking in standard. In the absence of any material worth evidence that the samples, so collected by the Excise officials from retail shops, were supplied by the licensee, this Court had interfered with the order, whereby Excise duty was imposed for revenue loss and equal amount of penalty. The facts of the present case are apparently distinguishable from the case of ***M/s Spicy Beverage Pvt. Ltd.*** (supra), inasmuch as in the present case, the samples, taken from the warehouse, have been found to be not fulfilling the desired standard. In case of ***M/s Spicy Beverage Pvt. Ltd.*** (supra), the samples, collected from the warehouse, were found to be of desired strength and quantity. The ratio of the decision in case of ***M/s Spicy Beverage Pvt. Ltd.*** (supra), in my view, cannot be applied in the facts and circumstances of the present case.

21. Mr. Singh, learned Senior Counsel, has further submitted that non-supply of the report of the Chemical Examiner and letters of the Excise Commissioner along with show cause notice, vitiates the entire action of the respondents, the same being in violation of the principles of natural justice. He has submitted that in the absence of the report of the Chemical Examiner and the letters, issued by the Department of the Collector, West Champaran, Bettiah, the petitioner-company could not make effective reply to the show cause notice. According to him, the action of the respondents is, thus, vitiated being in violation of the principles of natural justice.

22. I have perused the pleadings made in the writ application. Except for taking a plea that the said documents were not supplied and which were supplied subsequent to filing of the show cause reply, there is no pleading that non-supply of those documents prejudiced the case of the petitioner-company in any manner at the stage of decision taken by the Collector, West Champaran, Bettiah.

23. The principles of natural justice are quite flexible in nature and it cannot be applied in any straight jacket formula.

24. An administrative or *quasi-judicial* action, even if found to be in violation of principles of natural justice, may not need interference in exercise of inherent equitable jurisdiction, under Article 226 of the Constitution of India, unless it is pleaded and proved that violation, in fact, prejudiced the case of the aggrieved party. I may refer to observations made by Lord Wilberforce in ***Malloch v. Aberdeen Corporation (WLPRP)*** to the effect that a breach of procedure cannot give rise to a remedy in course, unless behind it there is something of substance, which has been lost by the failure. He added that Courts do not act in vain. These observations have been cited with approval by the Supreme Court, in case of ***M/s. Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati & Ors.***, reported in ***2015 (8) SCC 519***, paragraph 40 of which reads thus:-

> "**40.** With this we advert to the last submission of Mr. Sorabjee that the judgment in ***R.C. Tobacco*** (supra) (which is a two Judge Bench

decision) is in conflict with the three Judge Bench judgment in ***J.K. Cotton*** (supra). This argument is not even open to the appellant for the simple reason that the judgment in ***J.K. Cotton*** (supra) was specifically taken note of and discussed in ***R.C. Tobacco*** (supra). Paragraph 13 of the judgment in ***R.C. Tobacco*** (supra) would reflect that the appellant therein had specifically relied upon the judgment in ***J.K. Cotton*** (supra) in support of the submission that retrospectivity was harsh and excessive since there is, in fact, a retrospective imposition of excise duty. It was also argued that justification of such retrospective imposition of tax must be overwhelming and no such overriding consideration had been disclosed. The submission went to the extent of pleading that if the appellant is called upon to pay the excise duty now it will cripple its unit. More pertinent was another submission, which is relevant for our purpose, that the demand which was raised could not be sustained as it was made without issuing any show-cause notice and was in contravention of Section 11A of the Act. In support of this view, few judgments, including ***J.K. Cotton*** (supra), were relied upon. The Court, however, did not find any merit in the aforesaid submissions and dealt with the issue as under, duly taking note of the judgment in ***J.K. Cotton*** (supra):

> "40. In *J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India*, (1987) Supp. SCC 350, relied upon by the petitioners, by virtue of the retrospective amendment of Rules 9 and 49 of the Central Excise Rules in 1982, commodities obtained at an intermediate stage of manufacture in a continuous process were deemed to have been 'removed' within the meaning of Rule 9(1) thereby making such intermediate products dutiable under the Act with effect from the commencement of the Act i.e. 1944. In this context the Court held that the amended Rules 9 and 49 would take effect subject to Section 11-A. The decision is distinguishable. The circumstances in which the Court held that the demands for duty could only be limited to six months prior to the

amendment was unquestionably different from those present in the case before us. What we have to consider here is whether the benefit granted in 1999 could be withdrawn in 2003. Besides, the Court in *J.K. Cotton Spg. & Wvg. Mills Ltd.* case rejected the contention of the Union of India that Section 51 of the 1982 Finance Act by which the amendments were made to Rules 9 and 49 overrode the provisions of Section 11-A saying: (SCC p. 363, para 32) "if the intention of the legislature was to nullify the effect of Section 11-A,.. the legislature would have specifically provided for the same." Similarly our decision in *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India* (2003) 5 SCC 23 which dealt with an amendment to Section 80-P(2)(a)(iii) of the Income Tax Act, 1961 noted that: (SCC p.35, para 29)

> "The amendment does not seek to touch on the periods of limitation provided in the Act, and in the absence of

> such express provision or clear implication, the legislature clearly could not be taken to intend that the amending provisions authorizes the Income Tax Officer to commence proceedings which before the new Act came into force, had, by the expiry of the period provided become barred".
>
> In the present case Section 154(4) specifically and expressly allows amounts to be recovered within a period of thirty days from the day Finance Bill, 2003 received the assent of the President. It cannot but be held therefore that the period of six months provided under Section 11-A would not apply.**"**

In the absence of any pleading and effective submission that non-supply of the letters adversely prejudiced the case of the petitioner-company, the impugned action cannot be interfered with on the ground of violation of the principles of natural justice.

25. Learned Senior Counsel, appearing on behalf of the petitioner-company has submitted that the samples were taken from the BSBCL Depot by a team of persons, who were not authorized to do so, under Section 69 of the Act. Section 69 of the Act reads thus:-

> **"69. Power to enter and inspect, and power to test and seize measures, etc.**–Any of the following officers, namely : -
>
> (a) the Excise Commissioner, or
>
> (b) a Collector, or
>
> (c) any Excise Officer not below such rank as the State Government may, by notification, prescribe,
>
> may subject to any restrictions prescribed by the State Government by rule made under Section 89, -
>
> (i) enter and inspect at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant; and
>
> (ii) enter and inspect, at any time during which the same may be open, any place in which any intoxicant is kept for sale by any licensed person; and
>
> (iii) examine the accounts and

registers maintained in any such place as aforesaid; and

(iv) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or intoxicant found in any such place as aforesaid; and

(v) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.**"**

(Emphasis supplied)

On bare reading of the said provision, it can be easily noticed that it deals "with inspection etc. at any place in which any manufacturer carries on the manufacture of or stores any intoxicant; any place in which any intoxicant is kept for sale by any licensed person; examination of the accounts and registers maintained in any such place as aforesaid; examination, test, measure or weigh any materials, stills, utensils, etc. of intoxicant found in any such place as aforesaid; and measurement, weights or testing instruments, found in any such place as aforesaid.

Section 69 of the Act, thus, refers to two kinds of places with reference to power to enter and inspect and power to test and seize measures *viz.*–

[i] where any licensed manufacturer carries on manufacture of or stores any intoxicant; and

[ii] where intoxicants were kept for sale by any licensed person.

Section 69 of the Act certainly does not refer to the Depots of BSBCL to which a manufacturer is required to supply the intoxicant and from where the intoxicant is to be supplied to the licensee. Section 69 of the Act has, therefore, no application in the matter of collection of samples from the stock of BSBCL.

26. This is not in dispute that the petitioner-company was the only manufacturer and supplier, who held exclusive privilege for the same in the districts of West Champaran and Gopalganj. On the ground that the samples were not taken in the presence of the petitioner-company and the respondents failed to disclose the names/identities of the Members of the BSBCL team from Patna, which carried out the exercise of collection of samples, in my opinion, cannot be a ground for interfering with the impugned action. Though, there is an allegation in the writ application that the alleged samples had been implanted for ulterior reasons, *mala fide* for harassing the petitioner-company, no reason has been explained as to why the officials would have harassed the petitioner and for what gain. It is said more often that it is easy to make an allegation of *mala fide* than to make out. In absence of any material and sufficient pleading, in support of the said allegation, the impugned action cannot be interfered with, on the ground of the same being *mala fide*.

27. There is an averment, made in the writ application, that opening and closing stocks on 10.02.2012 are same, which, according to them, is evident from daily stock register of BSBCL, which indicates that no sample was, in fact, taken out. The averment has been denied in the counter affidavit, filed on behalf of the respondents, and it has been stated that the same number of sachets, as collected, were debited in the manufacture stock register, maintained at the Depot, and that computer stock could be reconciled only after due permission of the headquarter. This being the reply of the respondents, it cannot be held that opening and closing stocks, as on 10.02.2012, were same. It has strongly been submitted that in the absence of any justification for inordinate delay of 45 days in examination of the sample by the Excise Chemical Examiner, tampering with the samples could not be ruled out and, therefore, the action in imposing Excise duty and equivalent penalty is illegal and not sustainable in the facts and circumstances of the case.

28. In my considered view, the delay itself cannot be the a ground for interfering with the finding arrived at by the Collector, West Champaran, Bettiah, to the effect that the liquor, manufactured and supplied, was of lower strength and less in quantity.

29. Reliance has been placed on a decision of Supreme Court, in case of ***Manohar Lal (Dead) By LRS. Vs. Ugrasen (Dead) By LRS.***, reported in ***2010(11) SCC 557***, to submit that the action has been taken at the behest of the superior authority, i.e., Excise Commissioner, Bihar, Patna, who is higher in hierarchy to the competent authority, i.e., the Collector, West Champaran, Bettiah. It has been submitted that the Collector had just followed the dictate of the Excise Commissioner, while passing the impugned order, the Excise Commissioner being the appellate authority.

30. It is true that if the appellate authority or revisional authority takes upon itself, the task of the original statutory authority to pass an order, it would remain unenforceable, for the reason that it cannot be termed to be an order passed under the Act. However, in the present case, I notice that Excise Commissioner did not record any finding as to whether the country liquor was found to be less in strength and quantity. It appears from the records that the report of the Excise Chemical Examiner was simply forwarded to the Collector, West Champaran, Bettiah, through a letter, dated 24.04.2012, issued by the Deputy Commissioner, Central Excise, EIB, Bihar, Patna, with a request to take action against the licensee/petitioner-company, under Section 42 (1) (h) of the Act. The communication, dated 24.04.2012, cannot be held to be an order passed by an appellate authority. Further, we notice from the impugned order, passed by the Collector, West Champaran, Bettiah, that the same is speaking and reasoned and, in my view, it need not be interfered with on the ground of the alleged non-application of mind. While passing the impugned order, dated 02.05.2013, the Collector, West Champaran, Bettiah, has elaborately considered the plea taken by the petitioner-company. The order, dated 02.05.2013, does not appear to be influenced by communication from the Excise department, dated 24.04.2012.

31. Reliance has also been placed on a Supreme Court decision, in case of ***V.K. Ashokan Vs. Assistant Excise Commissioner & Ors.***, reported in ***2009 (14) SCC 85***, in support of the plea that the Excise Commissioner and Joint Excise Commissioner, Bihar, Patna, *vide* their letters, dated 02.05.2013 and 30.08.2012, had already held the petitioner-company guilty of the alleged act and issuance of show cause notice was mere formality. In case of ***V.K. Ashokan*** (supra), the Excise Commissioner, being higher authority, had already expressed his opinion that application of Rule 6 (28) of the extant rules was automatic consequent upon cancellation of licence, in terms of sub-Rule (30) of those rules. In that background, the Supreme Court held that Assistant Commissioner of Excise, who had the original authority to issue such notice, could not have taken a different view. In such circumstances, the Supreme Court, in case of ***V.K. Ashokan*** (supra), held that the proceeding ought to have been initiated by the Assistant Commissioner of Excise, who was required to apply his own minds. Such is not the case here. In the present case, the report of Excise Chemical Examiner was forwarded to the Collector, West Champaran, Bettiah, who was admittedly the original authority and who had issued show cause notice to the petitioner-company. The Supreme Court decision, in case of ***V.K. Ashokan*** (supra), has no application in the facts and circumstances of the present case.

32. On the basis of above discussion, I do not find any fault with the finding arrived at by the Collector, West Champaran, Bettiah (the original authority), that the samples, which were collected from BSBCL Depots were supplied by the petitioner-company and that the country liquor, so supplied, were found to be weak in strength and less in quantity than prescribed. The findings arrived at cannot be said to be perverse, based on no evidence, or contrary to evidence, requiring this Court to interfere, exercising power of judicial review, under Article 226 of the Constitution of India.

33. As discussed above, I do not find any breach of the principles of natural justice, requiring interference with the impugned orders, exercising power of judicial review. The plea that the alleged samples have been implanted for ulterior reasons with *mala fide* intention for harassing the petitioner-company, cannot be accepted in the absence of sufficient pleading on record as to who held personally bias against the petitioner-company or who was going to be advantaged otherwise by implanting the samples. In the absence of specific pleadings in this regard, ground of *mala fide* cannot be entertained.

34. It is true that the basis of calculation of quantum of compensation and equivalent amount of penalty does not figure in the impugned order passed by the Collector. This aspect has been taken note by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, in order, dated 20.02.2014, in case No.24 of 2013. While upholding the order of the Collector, West Champaran, Bettiah, dated 02.05.2013, the Chairman-cum-Member, Board of Revenue, has recorded that the Collector in his order has not explained the basis of calculation of the revenue loss. The Chairman-cum-Member, Board of Revenue, Bihar, Patna, by his order, dated 20.02.2014, has asked the Collector to take legal steps to realize the loss "after serving on the petitioner-company the detailed calculation on the basis of which he arrived at the quantum of loss".

35. In my opinion, after having found the infirmity to the effect that the order of the original authority, i.e., the Collector, West Champaran, Bettiah, dated 02.05.2013, did not disclose the basis for calculation of the quantum of revenue loss, he ought to have satisfy the order of the Collector and remanded the matter back to him for passing an order afresh. That having not been done, we intend to interfere with the order, dated 20.02.2014, passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, and the order of the Collector, dated 02.05.2013, for this limited purpose.

36. Accordingly, the impugned order, dated 02.05.2013, passed by the Collector, West Champaran, Bettiah (Annexure-2), and the order, dated 20.02.2014, passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna, in case No.24 of 2013, are quashed for the said limited purpose.

37. The matter is remanded back to the Collector, West Champaran, Bettiah, to pass an order afresh on the point of calculation of quantum of revenue loss caused to the State exchequer/BSBCL after giving the petitioner-company an opportunity of being heard. Such order must be passed within a period of two months from today. It will, however, be open to the petitioner-company to question the correctness of the order in compliance of the present, before appropriate forum, in accordance with law.

38. This application is, thus, partly allowed.

(Chakradhari Sharan Singh, J.)

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

(I. A. Ansari, ACJ.)

Praveen-II/-

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