

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11328 of 2013

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1. Sudhir Kumar Son Of Late Raghubar Prasad Resident Of Village Kaushik Nagar, Police Station Hilsa, District Nalanda
 2. Sanad Kumar Son Of Shree Kamta Prasad Yadav Resident Of Muhalla Patel Nagar Bus Stand, Police Station Hilsa, District Nalanda
 3. Munna Prasad Son Of Shree Mundrika Prasad Resident Of Muhalla Bihari Road, Police Station Hilsa, District Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Transport Department, Government Of Bihar, Vishwesaraiya Bhawan, Bailey Road, Patna- 800015
2. The District Magistrate, Nalanda
3. The District Transport Officer, Nalanda
4. The Sub Divisional Magistrate, Hilsa, Nalanda
5. The Sub Divisional Police Officer, Hilsa, Nalanda
6. The Officer-In-Charge Of Police Stations, Through Sub Divisional Police Officer, Hilsa, District Nalanda

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 15-03-2016

Heard the counsel for the petitioners and the State.

The three petitioners own trucks and uses the route on which the respondent-District Magistrate put a restriction on movement of the trucks for a specified period of time in a day. The order passed by the joint signatures of the District Magistrate and the Superintendent of Police, Nalanda on 21.09.2012 is enclosed at Annexure-1.

A counter affidavit has been filed on behalf of the respondents.

The contention of the petitioners is that the procedure under section 115 of the Motor Vehicles Act, 1988 (for short ‘the Act’) has been prescribed for doing so. In the present case, no such formality or step was taken. Although the order has been passed in the general interest of public safety or convenience, but it has to be in accordance with law. A representation in this regard is pending

which has not been heeded to till date.

Section 115 of the Act reads thus:-

“115. Power to restrict the use of vehicles._.

The State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibits or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.”

Counsel for the petitioners states that other heavy commercial vehicles are allowed/permitted to ply even during daytime on the route in question whereas the trucks have only been prohibited/restricted from plying under the impugned order.

In the counter affidavit only the necessity of putting such restriction on the movement has been spelt out.

After hearing the parties, the writ application is disposed of by the following order:-

Let the petitioner file a fresh application raising the issues as raised in this writ application before the respondent District Magistrate within 03 weeks along with copy of this order whereafter the respondent-District Magistrate shall examine the same and take appropriate decision and/or pass appropriate order as deemed fit and proper as quickly as possible, preferably within 03 weeks thereafter. If no order is passed or decision is taken within the aforesaid time in the light of the rule-provision(s), the impugned order (Annexure-1) shall cease to have its effect on expiry of the period of 03 weeks from the date of filing of the representation by the petitioners before the said respondent.

(Kishore Kumar Mandal, J)

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