

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20308 of 2016

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Yogendra Prasad, son of Late Yadav Lal Prasad, resident of Macchargawa Bazar,
P.S. Yogapatti, District West Champaran, Bettiah.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Excise and Prohibition Department,
Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, West Champaran, Bettiah.
4. The Certificate Officer, West Champaran, Bettiah.
5. The Superintendent of Excise, West Champaran, Bettiah.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Satyabir Bharti, Adv.

Mr. Alok Chandra, Adv.

Mrs. Aparna Arun, Adv.

For the Respondent/s : Mr. Lalit Kishore(P.A.A.G.-1)

Mr. Ranjeet Kumar, A.C. to P.A.A.G.-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-01-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner has limited grievance with
respect to the Certificate Case No.42/2015-16, in which the
Certificate Officer has issued bailable warrant against the petitioner.

3. The petitioner claims that he has never obtained any
licence, whereas it has been denied by the Excise Department.
When, the petitioner has not deposited the licence fee, the
Superintendent of Excise, West Champaran, Bettiah issued demand
notice on 14.09.2015 for depositing Rs.36,41,800/-, which has been



challenged before the Excise Commissioner in Excise Appeal No. 20 of 2015, but the same has not been disposed of till date.

4. Learned counsel for the petitioner submits that the Superintendent of Excise without waiting of outcome of the Excise Appeal has sent the requisition for recovery of the amount, which has generated the Certificate Case No. 42/2015-16, there the petitioner has also filed his objection under Section 9 of the of the Act. The Certificate Officer has rejected the objection and issued the bailable warrant for the purposes of depositing the aforesaid amount.

5. Learned counsel for the petitioner further submits that the adjudication of the case before the appellate authority has not been completed and till the disposal of the case he is not supposed to deposit the amount before the Certificate Officer. As his appeal is still pending, he requires protection from the operative act of the Certificate Officer.

6. Whereas, learned counsel for the State submits that the petitioner can file an appeal before the appellate authority under the Act inasmuch as the matter is pending before the appellate authority he must take proper steps before the appellate authority for the purposes of obtaining appropriate order in his favour.

7. Having considered the rival contentions of the parties,



the recovery proceeding has been initiated on account of the requisition sent by the Excise Superintendent, which is the subject matter before the appellate authority and the appellate authority till date has not disposed of the matter.

8. In such view of the matter, this Court is not examining the merit of the claim of the petitioner, but till the disposal of the interim application, if it is filed by the petitioner before the Excise Commissioner within two weeks from today the coercive steps taken by the Certificate Officer is stayed. If the petitioner does not file proper application, then this order will be treated to have been withdrawn, but it will continue till the disposal of the interim application if any filed by the petitioner. It is well known principle of law that demand is always subject to order passed by the appellate authority.

9. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	21.01.2017
Transmission Date	

