

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9994 of 2016

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Baidhya Nath Singh Son of late , Abhinandan Singh Resident of Mohalla- Weelar Gang, PS Laherisarai District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar , through the Commissioner cum Secretary, Department of Excise, Government of Bihar, Patna
2. The Commissioner Cum Secretary , Department of Excise Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The Collector, Darbhanga.
5. The Superintendent of Excise, Darbhanga.
6. The District Certificate Officer, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Iqbal Asif Niazi

For the Respondent/s : Mr. Lalit Kishore- PAAG

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-07-2017

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

In this case, the petitioner is challenging the order dated 14.3.2016, whereby and whereunder, the Certificate Officer, Darbhanga, has directed for recovery of an amount of Rs. 2,54,688/-.

As per case of both the parties, the petitioner was granted licence of group liquor shops no.17 which was consisting of a composite liquor shop and Desi Sharab, The petitioner has deposited the licence fee amounting Rs. 11,15,280/- by two challans dated 15.2.2014 and, thereafter, he has also deposited security amounting



Rs. 11,15,300/- by way of extra deposit in favour of the Excise Superintendent. The petitioner has claimed that he could not deposit the monthly fee of all three group shops for the month of April, 2014 rather somehow he managed to deposit the monthly fee Rs. 2,86,740/- with respect to his composite shop no. 86 through the BTC and, thereafter, he was compelled to close down all three shops. He also raised the grievance in the Janata Darbar for foreclosure of his shop and he has submitted that in fact he has paid extra amount and he is entitled to return, all on a sudden, he has received the notice under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 for deposit of an amount of Rs. 2,54,660/- arising from Certificate Case No. 01/2014-15.

Learned counsel for the petitioner submits that he has appeared, raised objection in paragraph nos. 8, 9 & 10 of his objection petition, has given details in what manner he has deposited the amount. Further he has raised a grievance the order of cancellation was passed behind his back without giving opportunity of hearing so that part of the action of the respondent cancelling the licence is completely arbitrary and illegal which is not subject matter of consideration before this Court in the present proceeding. However, while exercising the power under Section 10 of the Act, the Certificate Officer has to adjudicate the dispute and, thereafter,



execute his order when under Section 9 the objection has been filed, the Certificate Officer is supposed to deal with the objection that has been raised otherwise Section 9 of the Act will lose its relevance and it will become redundant which is not the intent and idea of the legislature. Merely provision/section is not a showpiece of the statute but, it is supposed that whatever objection raised in the objection petition was required to be dealt with. The State cannot fill up the lacuna in the order passed by the Certificate Officer by filing a supplementary affidavit. This proposition of law has been decided in the case of Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851 where the Hon'ble Apex Court has held that if the order suffers from illegality, that lacuna cannot be filled up by the filing an affidavit.

In the present case, the petitioner has filed the objection where he has explained in what manner he has paid the amount but the Certificate Officer, instead of dealing with the matter, without considering the objection, has passed the order.

In that view of the matter, the sweeping order of the Certificate Officer, Darbhanga, is set aside, the matter is remanded back to the Certificate Officer, Darbhanga, who will consider the objection raised by the petitioner in his objection petition and after hearing all the parties will pass a reasoned order.



In the result, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.07.2017
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