IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18598 of 2015

1. Upendra Kumar son of Late Rajdev Prasad, resident of Mohalla- Mithapur, B Area, Near Dayanand Middle School, P.S. Jakkanpur, P.O. G.P.O., District Patna.

.... Petitioner/s

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, Patna
4. The Assistant Commissioner of Excise, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 16017 of 2016

Mira Devi

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19555 of 2016

1. Asha Thakur, wife of Shri Mukesh Thakur, resident of Rahua, P.S.- Warisnagar, District- Samastipur.

.... Petitioner/s

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, Samastipur
4. The Superintendent of Excise, Samastipur.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 15148 of 2016

1. Neelam Gupta wife of Sri Satyendra Prasad Gupta, resident of Redama, PO & PS Medini Nagar, District- Palamu, Jharkhand

.... Petitioner/s

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, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18761 of 2016

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1. Barmeshwar Singh Son of Shri Lalan Singh, Resident of Village- Kund, P.S. Dinara, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government, Bihar, Patna.
2. The Excise Commisssioner, Bihar, Patna.
3. The Collector, Rohtas.
4. The Assistant Commissioner of Excise, Rohtas, Sasaram.
5. The Certificate Officer, Rohtas, Sasaram.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 16200 of 2016

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Gaurishankar Prasad

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 11445 of 2016

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1. Gita Devi wife of Shri Binod Singh, resident of Bajuatola, Ward No. 17, P.S. Piro, District Bhojpur

.... Petitioner/s

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, Buxar
4. The Superintendent of Excise, Buxar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 17406 of 2016

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1. Surendra Singh son of Late Ram Naresh Singh resident of village - Maundiha, P.S. Nokha, District - Rohtas.

.... Petitioner/s

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, Rohtas.
4. The Assistant Commissioner of Excise, Rohtas, Sasaram.
5. The Certificate Officer, Rohtas, Sasaram.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 14922 of 2016

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1. Dashrath Singh Son of Sri Jagdish Singh resident of village - Khutaha Darshan Tola, P.S. Sanjhauli, District Rohtas

.... Petitioner/s

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, Rohtas
4. The Assistant Commissioner of Excise, Rohtas, Sasaram
5. The Certificate office, Rohtas, Sasaram

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5830 of 2016

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1. Rani Devi Wife of Shri Lakshman Prasad Sah resident of village - Piparpati, P.S. Mainatand, District - West Champaran, Bettiah

.... Petitioner/s

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 Superintendent of Excise, West Champaran, Bettiah

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5855 of 2016

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1. Zahida Khatoon, wife of Shri Mishbahul Haque, resident of Village Mahawat Toli, P.S. Bittiah, District- West Champaran, Bettiah.

.... Petitioner/s

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 Superintendent of Excise, West Champaran, Bettiah.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15609 of 2016

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1. Kunti Devi wife of Sri Sudip Sahu resident of Nawatoli (Kudu), P.S. Kudu, District Lohardagga, Jharkhand.

.... Petitioner/s

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, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5871 of 2016

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1. Munni Devi Wife of Shri Ram Prasad, resident of Village Mariya, P.S. Lauriya, District- West Champaran, Bettiah.

.... Petitioner/s

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 Superintendent of Excise, West Champaran, Bettiah.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Lalit Kishore- PAAG-1

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 26-07-2017

Challenging the action of the State Government in forfeiting the entire security amount of the petitioners, in view of an audit objection received, all these petitions have been filed.

Petitioners were granted licence for sale of liquor in accordance to the statutory Rule and on account of the fact that they did not deposit the licence fee as required under the terms and conditions of the licence for a particular period, the State Government in the Department concerned recovered the licence fee by adjusting it from the security deposit and closed the matter. However, while conducting statutory audit, the Chief Accountant General, Bihar, Patna, found that the security amount cannot be adjusted in the manner done for recovery of outstanding revenue. It has to be forfeited and, as per Rule, adjustment of security amount for recovery of outstanding revenue is not permissible. Based on the aforesaid report of the auditors, the impugned action has been taken. The entire security amount has been forfeited and, therefore, all these writ petitions for refund of the security amount. In some cases, the licence itself has been cancelled and in some cases the licences were permitted to run its course during its period of validity after adjustment of the advance licence fee through recovery of the security amount.

Be that as it may, the petitioners have challenged the action primarily on the ground that the security amount could not be forfeited in the manner done after adjustment of the licence fee and recovering it from the security amount. The entire amount has to be refunded back to the petitioners, whereas the respondents have come out with a case that for breach of the terms and conditions of the licence, the action taken is forfeiture of the security amount and further the State is entitled to recover the licence fee and the loss as is being done by issuance of demand notice which are under challenge.

During the course of hearing of these writ petitions, learned counsel for the petitioners invited our attention to a judgment of the Hon’ble Supreme Court in the case of V.K. Ashokan vs. Assistant Excise Commissioner, (2009) 14 SCC 85 and the finding recorded by the Hon’ble Supreme Court from para 62 onwards particularly with regard to the meaning of the word “security” and its significance and tried to argue that security is given as a security for recovery of the loss caused to the State Government and after recovering the licence fee, i.e. the loss, the amount of security has to be refunded back. However, learned counsel for the respondents invited our attention to the judgment and the observations made from para 70 onwards and argues that the State is further entitled to recover the loss caused and, therefore, the contention of the petitioner cannot be accepted.

Having considered the rival contentions, we find that in these cases merely on the basis of the audit objection received, the impugned action has been taken, but before taking the impugned action neither any show cause notice was given to the petitioners nor were they heard nor the principle of law laid down in the case of V.K. Ashokan (supra) was followed.

That being so, we deem it appropriate to remand the matter back to the competent department of the State Government to issue notice to the petitioners, consider their objection, evaluate it in the backdrop of the law laid down in the case of V.K. Ashokan (supra) or any other law as may be applicable and take a decision afresh in accordance with law.

Accordingly, we allow al these petitions in part, quash the impugned order and direct the petitioners to appear before the competent authority along with a certified copy of this order and on the same being done, the competent authority shall issue notices to the petitioners proposing the action to be taken against them, grant them opportunity of hearing and for submitting their explanation and thereafter taking note of the principles of law as may be applicable detailed hereinabove, proceed to pass fresh orders in accordance with law. The entire exercise in this regard should be undertaken and completed within a period of two months.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	1.8.2017
Transmission Date	N/A