

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8705 of 2017

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Dr. Md. Anwar, son of Late Md. Serajuddin, Proprietor of Similia Research Laboratory, resident of Mohalla - Milki, town Ara, P.S. Ara, District Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Collector, Bhojpur at Ara.
5. The Assistant Commissioner of Excise, Bhojpur, Ara.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 9364 of 2017

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M/s Mahesh Homoeopathic Laboratories, through the Managing Director, Dr. Mahesh Prasad, Son of Late Guru Sahay Lal, resident of Mohalla-Bahadurpur, P.S.- Bahadurpur, Distt.- Patna, Mahesh Homoeopathic Laboratories North of Nalanda Medical College, Bahadurpur, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna- 800015.
2. The Principal Secretary, Registration, Excise and Prohibition Department Vikas Bhawan, Bailey Road, Patna Govt. of Bihar.
3. The Commissioner, Excise Department, Government of Bihar, Patna.
4. The Assistant Commissioner, Excise Department, Collectorate, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8705 of 2017)

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Ms. Aparna Arun, Advocate



For the Respondent/s : Mr. Lalit Kishore, AG
Mr.Bishwa Bhibhuti Kumar Singh, Advocate
(In Civil Writ Jurisdiction Case No. 9364 of 2017)
For the Petitioner/s : Mr. Kumar Mritunjay Narain, Advocate
For the Respondent/s : Mr. Lalit Kishore -AG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-02-2018

Challenge in these two petitions are made to the provisions of Section 2(40) (vii) and Section 13 of the Bihar Prohibition and Excise Act, 2016 and it is stated that the act of the State Government in including ‘any preparation or ingredient, either medicinal or otherwise’ in the definition of the ‘intoxicant’ is illegal.

The issue and the implication of the definition of intoxicant as contained in Section 2(40) (vii) and (viii) of the Act in question has already been considered and answered in favour of the petitioners in CWJC No.6415 of 2016 (Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Versus The State of Bihar & Ors) and CWJC No.6404 of 2016 (Samrat Chemical Industries Vs. The State of Bihar & Ors.) and a co-ordinate Bench of this Court by a detailed judgment rendered on 27.10.2016 has declared the provision as *ultra vires* so far as it is made applicable to “manufacture, sale or distribution of medicinal and toilet preparations containing



alcohol”. The operative part of the judgment, i.e. para 35 in the case of the **Shree Baidya Nath Ayurved Bhawan Pvt. Ltd.** (supra) reads as under:-

“35. In view of the discussions made in the foregoing paragraphs, particularly, in the case of **Khoday Distilleries Ltd.** (supra) and **Synthetics and Chemicals Limited** (supra), there can be no escape from the conclusion that the State cannot prohibit manufacture, sale or distribution of medicinal and toilet preparations containing alcohol. The power of the State is restricted to Excise duty and at the maximum, such power may be exercised of place reasonable restrictions in the interest of general public, under Article 19(6) of the Constitution of India, subject to test laid down under Articles 14 and 19 of the Constitution of India.”

That apart, based on the aforesaid judgment, in the case of the present petitioners themselves, identical writ petitions filed have already been allowed by a bench of this court vide Annexure-7 passed in CWJC No.9029 of 2016 (Dr. Md. Anwar Vs. The State of Bihar & Ors.) and CWJC no.13497 of 2016 (Dr. Arvind Kumar vs the State of Bihar & Ors.) on 21.11.2016.

In view of the above, we see no reason to take a different view. We allow the petitions in terms of the order already passed as indicated hereinabove in **Shree Baidyanath Ayurved Bhawan**



Pvt. Ltd. (supra) and **Dr. Md. Anwar** (supra) disposed of on 27.10.2016 and 21.11.2016 respectively.

Both the petitions stand allowed and disposed of in terms thereof. Consequential benefits now in terms of the aforesaid order be extended to the petitioners.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2018
Transmission Date	

