IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6944 of 2018

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Tirupati Logistics Private Limited, a Company registered under the provisions of the Companies Act, 1956 having its registered office at Crescent Tower, 5th Floor, 229, A.J.C. Bose Road, Kolkata- 700020 through its Branch Manager-cum-authorized Signatory Mr. Pawan Pareek, Son of Shri Kanayalal Pareek, Resident of House of Krishna Thakur, Nagina Nagar, Phulwari Sharif, P.S.- Phulwari Sharif, District- Patna- 801505. .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The District Magistrate, Kishanganj.
3. The Superintendent of Police, Kishanganj.
4. The Station House Officer, Kishanganj Police Station, Kishanganj.

.... Respondent/s

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Appearance:

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

For the Respondent/s : Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 23-04-2018

Petitioner in the present case is a private limited company and has approached this court under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to forthwith release 2450 cases of Kingfisher Strong Premium Beer-650 ML, seized in connection with Kishanganj P.S.

Case No. 212 of 2018 dated 24.03.2018.

2. It is the case of the petitioner that the consignment in question was being lawfully transported from Kalyani, P.O. Kalyani, District-Nadia, West Bengal to BEVCO Warehouse of the West Bengal State Beverage Corporation Limited at Siliguri, District Darjeeling in Vehicle Nos. WB 41 D 1202 and WB 23 C 1366. It is submitted that the goods in question were being transported in ordinary course of business and the petitioner had hired vehicles from various parties to transport the goods. It is submitted that the petitioner in course of his business under agreement with United Breweries Limited, Kalyani, Nadia, District West Bengal is required to transport its goods/Beer through the designated routes indicated in the transport permits. It is submitted that the vehicles in question were having transport pass and invoices duly showing the consignment in question and the transport pass were issued by the West Bengal Excise Department, Government of West Bengal. The petitioner alleged that while transporting the goods in question through N.H. 34 only but during a particular stretch of route near Kishanganj, Bihar, it happened that the drivers by mistake took the route of N.H. 31 instead of N.H. 34 and came into the territory of Bihar. The petitioner has tried to explain that it happened so because normally the trucks heading to Siliguri take N.H. 31 route in that

stretch. According to the petitioner, it was a purely an unintended mistake on part of the drivers of the vehicles without any *mala fide* to carry the beer into the State of Bihar.

3. On the other hand, a counter affidavit has been filed by the District Magistrate, Kishanganj, who has stated that the two trucks in question were stopped during checking and as the drivers did not give any satisfactory answer about the loaded goods and on inquiry the trucks were found to be loaded with heavy quantity of Kingfisher strong premium beer, the vehicles with the beer were seized by police and a First Information Report being Kishanganj P.S. Case No. 212 of 2018 has been registered. The allegation in the First Information Report is that both the drivers illegally entered in the area of Kishanganj Police Station with the beer and such entry was contrary to route mentioned in the transport pass. It has been submitted that they had no permission to enter in N.H.-31, Kishanganj in any situation. According to the counter affidavit, under the provisions of the Bihar Prohibition and Excise Act, 2016, the driver of the vehicle is obliged to obtain transit permission in the prescribed manner from the authority of the first check post falling en-route after entering into the State and shall surrender the same transit permission to the authority of the last check post before leaving the State and in the event of failure to do so within the

stipulated hours of leaving the first check post falling en-route, it shall be deemed that liquor or intoxicants so transported have been sold or disposed off by the owner or the person in-charge of the vehicle within the State of Bihar. Under the new excise policy, it is also prescribed that there should be a digital lock on such vehicles passing through the territory of the State of Bihar, but in this case although provisions has not been complied with.

4. In Paragraph No. 15 of the counter affidavit it has been stated that after the registration of F.I.R., a scientific and independent investigation is going on which is essential at this stage.

5. In course of submission of Mr. Satyabir Bharti learned counsel representing the petitioner has placed before us a print out of the Google map showing the routes from Nadia in the State of West Bengal to Siliguri. He has also placed before us a description of the State-wise length of National Highways (NH) in India as on 13.06.2017. It is his submission that in order to transport the beer from Nadia to Siliguri, the vehicles in question has to pass through the Kishanganj area for a while, therefore, there are chances of committing mistake of taking a wrong route.

6. Having heard learned counsel for the petitioner and the learned Advocate General for the State, and upon perusal of material available on the record, we find that investigation in the

present case was going on at the time of filing of the counter affidavit, the petitioner has directly moved this Court for release of the vehicles loaded with the beer. Submissions have been made that the beer if remains under seizure for three months will not be fit for consumption because the vehicle loaded with the beer are lying under open sky.

7. Without going into the merit of the contentions advanced on behalf of the petitioner and the learned Advocate General for the State, at this stage we are of the considered opinion that at this stage the Excise Commissioner, Bihar, Patna be directed to consider the request of petitioner for release of vehicle and the beer loaded thereon, on such terms and conditions which may be imposed by him under the Act. The petitioner may file an application seeking release of the vehicle and beer along with a certified copy of this order and on filing of such application the Excise Commissioner, Bihar shall consider the same and shall dispose of the application in accordance with law within a period of 15 days from the date of receipt of the application keeping in mind the submission of the parties.

8. In case the Excise Commissioner, Bihar fails to dispose of the application of the petitioner within the aforesaid period of 15 days, the petitioner will have a liberty to move this court

seeking appropriate relief in accordance with law.

9. The Writ Application stands disposed of accordingly.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Ved Prakash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2018
Transmission Date	NA