

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1562 of 2018

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Shankar Nut S/o Mishri Nut, R/o Vill.- Khatolan Bigha, P.S.- Islampur,
District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Excise,
Govt. of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Superintendent of Police, Nalanda.
4. The Sub - Divisional Officer, Hilsa, Nalanda.
5. The Officer Incharge of Islampur P.S., District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh

For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD
ORAL ORDER

4 21-08-2018 Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner is aggrieved by the order dated
04.04.2018, as contained in Memo No. 672 dated 06.04.2018,
arising out of Islampur P.S. Case No. 284 of 2017 dated
04.09.2017 for the offence under Section 30(A) of the Bihar
Prohibition and Excise Act, 2016 (hereinafter referred to as the
'Act'), Islampur P.S. Case No. 276 of 2016 dated 17.10.2016
under Section 290/34 of the Indian Penal Code and Section 47 and
38 of the Act as also in connection with Islampur P.S. Case No.
300 of 2017 dated 18.05.2017 under Section 30(A) of the Act. By



the impugned order, the District Magistrate, Nalanda has, in exercise of his power under Section 66 of the Act, exterminated the petitioner from district till 30.09.2018 on the ground that the petitioner is habitually involved in the business of liquor.

Learned counsel for the petitioner has assailed the order on the ground inter alia that the seizure lists prepared in those three cases, which were registered against him, are not in accordance with Section 100 of the Code of Criminal Procedure. It is his contention that the petitioner is running a general store and has been falsely implicated in this case only because he could not fulfill the illegal demand of the police authorities.

On the other hand, learned counsel representing the State submits that a bare perusal of the order passed by the Collector, Nalanda would show that the same has been passed after giving appropriate opportunity of hearing to the petitioner. The petitioner was served with a notice to show cause but despite service of notice he did not file any show cause to controvert the allegations. It is further submitted that the fact that the notice was duly served upon the petitioner is evident from the fact that the petitioner has himself enclosed a copy of the said notice as Annexure-2 to the writ application. Learned counsel has pointed out that under Section 66 of the Act the Collector has to



be only prima facie satisfied with the materials on the records to show that the person against whom an order is to be passed under Section 66 of the Act is involved in the offence repeatedly and while exercising such power the Collector is not bound by the rules of evidence.

Having heard learned counsel for the petitioner and learned counsel representing the State, this Court finds that the fact that the petitioner was served with show cause notice is not in dispute. In the writ application also, the petitioner has not taken any such plea that the notice was not served upon him. If the notice was served upon him and despite service of notice he failed to submit his reply to the Collector and the Collector has, in view of the report received from the Superintendent of Police, proceeded to pass an order under Section 66 of the Act, this Court does not find any procedural flaws or violation in passing of such order. Section 66 of the Act reads as under :-

“66. Externment etc of notorious or habitual offenders.— (1) Where it appears to the Collector that—

- (a) any person is a notorious or habitual offender under this Act, or*
- (b) that there are reasonable grounds for believing that any person is engaged or about to engage, in the district or any part thereof, in the commission of any offence punishable*



under this Act or abetment of such offence;

The Collector shall, by notice in writing, inform him of the general nature of the material allegation against him in respect of clauses (a) or (b) and shall give him a reasonable opportunity of tendering an explanation regarding them;

(2) The person against whom an order under this section is proposed to be made may be allowed to consult and be defended by a counsel of his choice;

(3) The Collector, on being satisfied that the conditions specified in clauses (a) or (b) of sub-section (1) exist, may by order in writing-

(a) direct him to remove himself outside the district or part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specified part thereof, until, the expiry of such period, not exceeding six months as may be specified in the order; and/or

(b)(i) require such person to notify his movement, or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order; or

(ii) prohibit or restrict possession or use by him of such article or excisable item as may be specified in the order; or

(iii) prohibit or restrict any particular activity or occupation that he is currently engaged in or likely to engage in; or

(iv) intern him to the nearest De-addiction Center



to undergo such treatment or counseling or both under the supervision of such medical expert for such period as may be specified in the order: or

(v) direct him otherwise to conduct himself in such manner as may be specified in the order;

until the expiry of such period, not exceeding six months, as may be specified in the order.”

Considering the scope and ambit of Section 66 of the Act, this Court finds that what is incumbent upon the Collector before passing of the order under the said provision is notice in writing informing the person against whom the order is proposed to be passed as to the general nature of the materials allegation against him and that the person will be given a reasonable opportunity of tendering an explanation regarding them. There is no plea that no notice was served upon the petitioner.

In the present case, in view of the report of the Superintendent of Police, the District Magistrate found that there were as many as three cases against the petitioner for being involved in the trade of liquor and the report was that he was involving in the said trade even after he was on bail in connection with the earlier case. A perusal of the report gave rise to a reasonable belief in the mind of the District Magistrate in terms of



clause (b) of sub-section (1) of Section 66 of the Act. In such circumstance, if the District Magistrate passed an order and thereby the petitioner has been exterminated from district for a period of six months, this Court does not find any reason to interfere with the order. The writ application is dismissed.

The interim order stands vacated.

(Rajeev Ranjan Prasad, J)

Arvind/-

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