IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8611 of 2018

Sona Sati Organics Private Limited, a Company incorporated under the Companies Act, 1956 having its registered office at and works at Raja Patti Kothi P.O. and P.S. Baikunthpur, District Gopalganj through its Authorized Signatory Vikash Ranjan son of Shri Pandey B N Sinha resident of Bari Bazar, Dumra, P.S. Sitamarhi, District Sitamarhi. ... ... Petitioner

Versus

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

... ... Respondents

with

Civil Writ Jurisdiction Case No. 9292 of 2018

Indian Tankers (p) Limited, a Company incorporated under the Companies Act, 1956 having its Corporate Office at B-1/3, Sector-15, GIDA, Sahjanwa, Gorakhpur-273209(U.P.). India through its Director Naushad Ahmad Son of Shri Nishar Ahmad Resident of Azad Nagar, North Tola,Ward No. 16, P.S. Cant, District- Kushinagar, Uttar Pradesh. ... ... Petitioner

Versus

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

... ... Respondents

Appearance :
(In Civil Writ Jurisdiction Case No. 8611 of 2018)
For the Petitioner/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Lalit Kishore -AG
(In Civil Writ Jurisdiction Case No. 9292 of 2018)
For the Petitioner/s : Mr. Satyabir Bharti,Advocate
For the Respondent/s : Mr. Vivek Prasad- GP7

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

8 23-07-2018 These two writ applications have been heard together as they arise out of same Police Station Case bearing Sahebganj P. S. Case No. 140 of 2018 dated 26.04.2018.

2. In C.W.J.C. No. 8611 of 2018 prayer has been made for a direction to the respondents to release 50,000 Liters of Denatured Anhydrous Ethanol which was, according to the petitioner, being lawfully transported vide Tankers Nos. UP 53 T 9886 and UP 53 AT 0886 from its distillery situated in the district of Gopalganj to Bharat Petroleum Corporation Limited, Muzaffarpur. The petitioner has enclosed copy of the agreement entered into with the Indian Oil Corporation and Bharat Petroleum Corporation Limited for the period December 2017 to November, 2018 (Annexure-1), the letter of acceptance/intent for supply of 1650 Kilo Liters of Ethanol to its Barauni Unit and 1200 Kilo liters of Ethanol to its Muzaffarpur Unit. A purchase order dated 11.01.2018 issued by the Bharat Petroleum Corporation Limited has also been brought on record as Annexure 2/1 to the writ application.

3. It is the contention of the petitioner that on the strength of the permission granted by the Excise and Prohibition Department, Govt. of Bihar, to manufacture Ethanol on its distillery for sale to the Oil Manufacturing Company under the license granted by the Government of Bihar and for sale of Ethanol so manufactured by it to the Oil Manufacturing Company, the aforesaid transactions were done with the Bharat

Petroleum Corporation Limited.

4. The grievance of the petitioner is that while the petitioner was supplying Ethanol to Bharat Petroleum Corporation Limited in the Tankers on the strength of excise permits and tax invoice and the E Way Bill and consignment note dated 25.04.2018 (Annexure-3 series), one of the consignments of 25,000 liters of Ethanol was loaded in Tanker No. UP53 T-9886 and another consignment of 25,000 liters was loaded in Tanker No. UP 53 AT 0886, as the Tankers were going to their destination to Muzaffarpur, on 25.04.2018 the petitioner came to know by way of a surprise that at 1:35 a.m. on 26.04.2018 both the Tankers were seized by the Inspector of Excise, Muzaffarpur vide seizure list dated 26.04.2018 and the allegation as levelled in the first information report are that some persons were indulged in illegal sale of Ethanol upon siphoning it out from the Tankers at Raj Line Hotel, Rajepur Chowk, Muzaffarpur.

5. In course of raid three persons including the drivers of the Tankers were arrested and it was found that without interfering with the Digital locks affixed on the Tankers they had siphoned of 315 liters of Ethanol from the Tankers by opening the upper lid of the Tankers. This is how the case came to be registered.

6. Learned counsel for the petitioners submits that the drivers of the vehicles have confessed their guilt, a copy of the confessional statement has been enclosed as Annexure-6 to the writ application. It is submitted that merely due to some act of omissions and commissions on the part of the drivers the entire consignment cannot be allowed to be seized and confiscated, since it is an admitted position that the vehicles containing Ethanol was a genuine transaction and there was no illegality or irregularity in the transportation of Ethanol from the Distillery at Gopalganj to Bharat Petroleum Corporation Limited at Muzaffarpur.

7. C.W.J.C. No. 9292 of 2018 has been preferred by the company to whom the Tankers belong to. The petitioner has sought release of the Tankers bearing Regd. No. UP 53T-9886 and UP 53AT-0886 seized in connection with Sahebganj P. S. Case No. 140 of 2018 dated 26.04.2018. We need not repeat the facts and pleadings of the writ application as a perusal of the writ petition shows that the petitioner has come out with similar pleas as have been taken in C.W.J.C. No. 8611 of 2018.

8. A counter affidavit has been filed on behalf of respondent nos. 2 and 3 sworn by the Superintendent of Excise, Muzaffarpur. On going through the statements made in the counter affidavit, it appears that admittedly, the two loaded Tankers were seized along with 315 liters of Ethanol in 9 Gallons. One motorcycle bearing Regd. No. BR06 AJ-5624, three mobiles and cash of Rs. 82,000/- have also been seized. As regards the statements made in paragraphs 2, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 of the writ application, there is no factual denial in the counter affidavit. These are the paragraphs which are in form of factual aspects as to the transactions in question and in support of those paragraphs various documents as have been taken note of hereinabove have been enclosed by the petitioner. In the counter affidavit the respondents are not disputing the genuineness and correctness of those documentary evidences which are enclosed with the writ application. The counter affidavit, however, do indicate certain omissions and commissions on the part of the drivers of the vehicles. Allegations have been made that the sample taken was sent for chemical examination to Excise Chemical Laboratories, Bihar and it has been found that the percentage of Crotonaldehyde were 0.05 % which is as per the Bureau of Indian Standards, used for human consumption. This is said to be in violation of Section 33 of the Bihar Prohibition and Excise Act, 2016.

Allegations have been made that the authority of Sona Sati Organics Private Limited, Gopalganj had taken an attempt to alter the denatured Ethanol for human consumption. It is stated that in course of search of Tanker it was found that the named accused persons have opened the lid of the Tankers.

9. Rejoinder to the counter affidavit has been filed sworn by the General Manager of the petitioner company in C.W.J.C. No. 8611 of 2018 in which submission is that the Ethanol which has been seized by the official respondents were whether in denatured form or otherwise is not an intoxicant or liquor. It is, according to the petitioner, at best a case of theft of Ethanol and cheating indulged into by the drivers of the Tankers and therefore, the FIR has rightly been lodged against the drivers. It is submitted that no offence under any of the provisions of the Excise Act is made out in the facts of the present case.

10. It is submitted that only because no case under the Excise Act was being made out, the Inspector of Excise upon preparing a seizure list has forwarded the same to the Station House Officer, Sahebganj Police Station for lodging of FIR. According to the petitioner, had it been a case under Excise Act, the Inspector of Excise was competent enough to register the case under Sections 74, 78 and 79 of the Excise Act to arrest, forward the accused before the Court, investigate the case and submit a final report. Since no offence under the Excise Act was made out, in view of the allegations and seizure of denatured Ethanol, the Excise Inspector, upon preparing the seizure list requested the Station House Officer, Sahebganj to lodge the first information report and the matter is being investigated by the Police. The petitioner has denied allegations made by the official respondents and in paragraph 7 of the rejoinder they have dealt in detail with the issue of denaturing of spirit.

11. Having heard learned counsel for the parties and on perusal of the records, we find that, admittedly, in the present case, Denatured Anhydrous Ethanol was being transported from the petitioner's Distillery at Gopalganj to Bharat Petroleum Corporation Limited, Muzaffarpur. The Tankers in question were seized when the drivers were indulged in unlawful act as alleged for taking out some quantity of Ethanol from the Tankers. It appears that during the pendency of the writ application, the case has been investigated and the case has been found to be true only against the persons named as accused in the first information report, namely, the Tankers drivers and the

Hotel owner where the search was conducted. The various documents enclosed with the writ applications are not being disputed by the respondents, we find that it was a valid transaction and transportation being done by the petitioner(s) but as alleged the drivers of the vehicles had indulged in some illegal act for which the case has been lodged and it has been found true against them only.

12. In these circumstances, we are of the considered opinion that both writ applications have to be allowed. The seized Denatured Anhydrous Ethanol in connection with Sahebganj P. S. Case No. 140 of 2018 except 315 liters which were seized in gallons as alleged be released in favour of the petitioner on the petitioner's furnishing two sureties to the extent of the value of the Ethanol (not in form of cash or bank guarantee) to the satisfaction of the learned court below within a period of one week from the date of submission of the two sureties. Similarly, the Tankers which are the subject matter of C.W.J.C. No. 9292 of 2018 shall be provisionally released in favour of the petitioner company on furnishing two sureties (not in the form of cash or bank guarantee) to the extent of the value as indicated in the insurance documents of the vehicles in question. Such release be made within one week from the date of submission of the surety bonds in the court below. It is made clear that if the two Tankers are lying loaded with the Ethanol, they will be released in loaded condition as presently standing.

13. The prayers made by the petitioners to restrain the respondents from initiating any proceeding for confiscation of the aforesaid consignment of Ethanol and also the tankers are not required to be considered at this stage because we do not find any statement in the writ application or in the counter affidavit of the respondents showing initiation of any confiscation proceeding. If the confiscation proceeding is initiated, in future the petitioners in both the writ application will have right to raise all such objections which may be available to them in accordance with law before the competent authority. On the petitioners' taking such objection the same shall be considered by the competent authority as a preliminary objection.

14. Both the writ applications are allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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