

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16679 of 2017

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Nagendra Kumar @ Nageshwar Prasad (M/S Vandana Cinema Hall, Biharsharif)
S/o-Late Budhan Mahto, Resident of Mohalla-Bhaisasur, P.S.-Laheri, District-
Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Excise Department, Govt of Bihar.
2. The District Magistrate-Cum-Collector, Nalanda at Bihar, Sharif,
3. The Superintendent of Police, Nalanda at Biharsharif.
4. The Sub-Divisional Officer, Sadar Bihar Sharif, Nalanda.
5. The Sub-Divisional Police Officer, Sadar, Biharsharif,
6. S.H.O., Laheri Police Station, Biharsharif, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Adv. Mr. Ravi Ranjan, Adv. Mr. Dhananjay Kumar Choudhary, Adv.
For the Respondent/s	:	Mr. Anil Kumar Sinha, G.A.-1 Ms. Aditi Hansaria, Ac to G.A.1

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 23-07-2018

Heard learned counsel for the petitioner and Mr. Anil
Kumar Sinha, G.A.-1 appearing on behalf of the State.

Petitioner seeks quashing of the order dated 02.11.2017
passed by the respondent no. 2, District Magistrate, Nalanda wherein
the license for renewal for the year 2016-17 has been rejected and the
petitioner's Cinema Hall has been directed to be closed till further
orders as a criminal case being Laheri P.S. Case No. 272 of 2017 has
been lodged wherein a raid was conducted in the generator room of
the Cinema Hall and the generator operator and his wife were arrested



on seizure of illicit liquor. Such refusal of license has been done in pursuance to Chapter-VI Sections 62 and 63 of the Bihar Prohibition and Excise Act, 2016.

The facts of the case is that the generator room of the said Cinema Hall named Vandana Cinema Hall at Biharsharif was raided on the basis of secret information, by the police officials on 03.07.2017 and 50 liters of county made liquor, 370ml of foreign liquor and two beer cans in the said generator room which is situated in the premises of the said Cinema Hall and the generator operator one Lalo Singh along with his wife Meera @ Bharti were arrested who named another Sonu Kumar who supplied the said prohibited liquor. Thereafter, the matter was put to investigation and a final form was submitted on 23.08.2017 which is Annexure-3 to the writ application whereby allegations against the said persons were found to be true. Petitioner is not named in the F.I.R. neither during investigation his name crept up and now the investigation is complete.

It has been submitted by the learned counsel for the petitioner that by Annexure-4 vide memo no. 2934 dated 18.07.2017, the Superintendent of Police, Nalanda had recommended for permission to start the Cinema Hall but subsequently on 30.10.2017 (Annexure-D series of the counter affidavit) on the basis of investigation by the Sub Divisional Police Officer, Biharsharif,



Nalanda has recommended not to renew the license to the respondent no. 2, the District Magistrate, Nalanda as the involvement of the petitioner is being investigated. He submits that the said prohibited liquor was recovered from the generator room which was situated at a distance of the main Cinema Hall.

Learned counsel for the petitioner submits that he is neither named in the F.I.R. nor during investigation his named crept up and on the frivolous plea of pending investigation which is already complete as investigation report is Annexure-3, the license of the petitioner is not renewed and the petitioner has been asked to close the Cinema Hall. He submits that before passing the impugned order as contained in Annexure-1 dated 02.11.2017, the petitioner has not been asked any show cause which is violation of the principles of natural justice. He submits that none of the provisions of the license under the Cinematograph Act, 1952 has been contravened in order to invoke penalties under Section 7 of the Cinematograph Act, 1952. The provision to revoke or suspend license is under Section 8 of the Bihar Cinemas (Regulation) Act, 1954 and license can be revoked or suspended if the holder of license has been convicted of an offence under Section 7 of the Cinematograph Act, 1952, or acts in contravention of any of the provisions of the Act or of the Rules made thereunder, or of the conditions and restrictions upon or subject to



which the license has been granted. Such action for non-renewal of license for the year 2016-17 has been rejected only on account of illicit liquor being found in the generator room where the generator operator and his wife have been arrested, investigation is complete and the petitioner has neither been named in the F.I.R. nor during course of investigation. He submits that unless there is contravention of Section 7 of the Cinematograph Act, 1952 his license could neither be revoked nor suspended under Section 8 of the Bihar Cinemas (Regulation) Act, 1954.

Mr. Anil Kumar Sinha, learned Government Advocate-1 appearing on behalf of the State submits that it is the discretion of the licensing authority to refuse license, if it is so necessary to do so in public interest as per Rule 9 of the Bihar Cinemas (Regulation) Rules, 1974 and that as per Rule 9 (ii) any order of a licensing authority refusing license is appealable. The petitioner instead of availing alternative remedy has invoked the writ jurisdiction of this Court under Article 226 of the Constitution on which ground, his writ application should be dismissed. He further submits that Annexure-D series to his counter affidavit would show that on the recommendation dated 18.07.2017 of the Superintendent of Police, Biharsharif as contained in Annexure 4, the matter was further enquired into and the Sub Divisional Police Officer by its memo no. 3823 dated 19.10.2017



has submitted before the Superintendent of Police that the matter regarding involvement of the petitioner as an owner of the Cinema Hall is being investigated.

Learned counsel for the petitioner submits that not a chit of paper has been filed by the State showing any investigation by the police or the involvement of the petitioner in the said occurrence in Laheri P.S. Case No. 272 of 2017. He further submits that the raid was conducted by the police officials and such prohibited liquor was found in the generator room situated at a far away place in the premises of the Cinema Hall. The petitioner is not named in the F.I.R. nor his name surfaced during investigation. Now investigation having been complete the impugned order dated 02.11.2017 has been passed in a most arbitrary manner.

Heard learned counsel for the petitioner and learned G.A.-
1 appearing on behalf of the State.

From perusal of the order dated 02.11.2017, it appears that the license of the petitioner was not renewed for the year 2016-17 because certain amount of liquor was found in the generator room which was operated by the generator operator and he and his wife and another has been made accused. There is no contravention of the provisions of Section 7 of the Cinematograph Act so as to attract Section 8 of the Bihar Cinemas (Regulation) Act. It is only under



Chapter-VI Section 62 and 63 of the Bihar Prohibition and Excise Act, 2016 that such action has been taken by the respondent no. 2 and not for contravention of any terms and conditions of the license or the Cinematograph Act, and that too without affording an opportunity of being heard before passing the impugned order. The order dated 02.11.2017 has been passed by the District Magistrate, Nalanda without affording an opportunity of being heard which is violative of principles of natural justice. In absence of contravention of provisions of Cinematograph Act the impugned order cannot be sustained. Order dated 02.11.2017 passed by the respondent no. 2 District Magistrate, Nalanda is quashed.

Petitioner is directed to approach the respondent no. 2 for renewal of license which will be renewed by the respondent no. 2 within six weeks from the date of filing of such application by the petitioner with requisite fees.

Writ application is, accordingly, allowed.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2018
Transmission Date	NA

