

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2866 of 2019

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Mahadev Carrier Pvt. Ltd., a company incorporated under the Companies Act,1956, having its registered office at 1/34 New Patliputra Colony, P.S Patliputra, District Patna-13 through its Director Shri Ravi Kumar , male aged about 43 years, S/o Late Chhedi Lal, resident of 1/34, New Patliputra Colony, P.S. Patliputra, District Patna-13

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Jamui.
4. The Superintendent of Police, Jamui.
5. The Station House officer, Chandramandi Police Station, Jamui.
6. The State of Jharkhand through the Principal Secretary, Department of Excise, Ranchi.
7. The Jharkhand State Beverage Corporation Limited, UTPAD Bhawan, Kanke Road, Ranchi.
8. Carlsberg India Private Limited, Tupudana Namkum Road, Tupudana, Ranchi, through its Manager.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti. Adv.
For the Respondent-State	:	Mr. Vivek Prasad, GP-7
For Respondent Nos.6 & 7	:	Mr. Arup Kumar Chongdar, Adv.
For the Respondent No.8	:	Mr. Gyan Shankar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 01-04-2019

The petitioner prays for issuance of a writ in the nature of mandamus directing the respondent authorities in the Registration, Excise and Prohibition Department of the Government of Bihar (hereinafter referred to as the 'Excise



Department') to forthwith release the truck bearing Registration No.BR 01 GD 5138 along with 500 cases of Tuborg Supreme Strong Premium Beer packed in bottles of 650 ml/500 ml, owned and manufactured by M/s Carlsberg India Private Limited seized by the Station House Officer, Chandramandi Police Station in the district of Jamui and retained in custody by the 'Excise Department' of the Government of Bihar in connection with Chandramandi P.S. Case No.93 of 2018 registered for the offences punishable under section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act').

The petitioner also prays for an appropriate direction restraining the statutory authorities under 'the Act' from initiating any proceeding for confiscation or destruction of the consignment in question which, according to the petitioner, was being lawfully transported from the licenced Warehouse at Ranchi to the Jharkhand State Beverages Corporation Warehouse at Deoghar.

Facts of the case lie in a very narrow compass and as placed on record by Mr. Satyabir Bharti, learned counsel appearing for the petitioner, the petitioner is a Transporter and has a valid permit for providing transportation service to its



client throughout the territory of this country.

It is submitted that it is under one such arrangement that the petitioner undertook to transport 250 cases of Tuborg Supreme Strong Premium Beer packed in bottles of 650 ml each and 250 cases of Tuborg Supreme Strong Premium Beer packed in bottles of 500 ml each through its vehicle bearing Registration No. BR 01 GD 5138 from 19C Warehouse of M/s Carlsberg India Private Limited situated at Tupudana, Namkum Road, Ranchi to the Warehouse of the Jharkhand State Beverages Corporation Limited, Deoghar on the strength of statutory excise permits/pass and transport documents.

It is the grievance of the petitioner as espoused through by Mr. Bharti that it is during this course of transportation of the consignment that the driver of the vehicle mistakenly entered into the jurisdiction of the State of Bihar barely few kilometers of its destination when it was seized by the Respondent no.5, Station House Officer, Chandramandi Police Station, Jamui along with assisting Constables, inter alia, on the allegation that the goods in question were being transported in violation of the provisions of section 30(a) of 'the Act', and an FIR was instituted.



According to Mr. Bharti, despite all explanation given by the driver of the vehicle and despite production of the documents, the respondent no.5 and his Constables were not willing to relent and allow the truck to return to its course to reach its destination at Deoghar rather they caused seizure of the truck and took the driver into custody after registering Chandramandi P.S. Case No.93 of 2018 for alleged violation of the provisions of section 30(a) of 'the Act'.

Mr. Bharti has placed on record the GPS Data vide Annexure 4 to the supplementary affidavit to demonstrate the movement of the truck which all along travelled within the territory of the State of Jharkhand but barely few kilometers of its destination at Deoghar that it crossed over to the territory of the State of Bihar in the district of Jamui when the police officials intercepted the truck, took it into custody and registered a police case.

Learned counsel appearing for the petitioner in reference to Annexure 2 series to the writ petition submits that the Dispatch Note is dated 24.12.2018 and confirms the name of the driver, the date of dispatch, the validity of the dispatch note, the details of the goods, the truck number as well as its destination at Deoghar depot. He submits that this dispatch



note is issued under the authority of the Jharkhand State Beverages Corporation Limited and attaches all details which confirms to a valid lawful transportation of the goods in question.

Learned counsel next refers to the Tax Invoice/VAT Invoice cum Bill of Supply at running page 27, the transport pass at running page 28 and the consignment note issued by the petitioner, all dated 24.12.2018 and forming part of Annexure 2 series to support the contention of the petitioner that the goods were being lawfully transported and were meant for supply within the State of Jharkhand in which State there was no prohibition of law in force. He submits that the truck was seized at 1.20 PM barely few moments before the truck could reach its destination.

Learned counsel in reference to the FIR at Annexure 3 submits that the Officer Incharge admits that the driver informed him that the goods were being taken from Ranchi to Deoghar but such disclosure was rejected simply on grounds that the Prohibition Law was in force in the State of Bihar and which prohibits transportation of liquor.

Placing the FIR Mr. Bharti contends that even when the driver explained about the lawful transportation of



the liquor with supporting documents, yet the vehicle was seized and the counter affidavit so filed in the case on behalf of the Dy. Superintendent of Police, Jamui though admits at paragraph 7 that on 27.12.2018 someone came to support the transportation with permits along with necessary papers yet simply hiding behind the provisions of 'the Act' that the respondents have refused to release the vehicle.

It is the submission of Mr. Bharti that it is in gross abuse of powers that the truck of the petitioner has been seized and even if any mistake was committed by the driver of the truck to cross over to the territory of the State of Bihar, the moment it transpired from the documents, that the goods were being lawfully transported, the respondent Jamui District Police and the 'Excise Department' should have shown prudence to release it immediately rather than harassing the petitioner for keeping the goods in seized condition for more than three months.

The arguments of Mr. Bharti have been contested by Mr. Vivek Prasad, learned Government Pleader No.7 who simply hides behind the provisions of section 30(a) of 'the Act' to defend the illegal action. Mr. Vivek Prasad in an attempt to improve the defence has referred to the stand of the



Dy. Superintendent of Police who was not even present when the alleged seizure took place, to submit that since the driver did not produce valid permit that the seizure took place and even though papers had been produced on 27.12.2018 but by then the police case had already been registered. This is all the defence that is put up by Mr. Vivek Prasad in support of the impugned action.

A pointed query as to what the State in its Excise Department did to verify the stand of the petitioner of the lawful transportation of the goods since after production of the valid permit by the person on 27.12.2018 as admitted at paragraph 7 of the counter affidavit filed on behalf of the Dy. Superintendent of Police, Jamui, an explanation is given that since the matter is under investigation hence the respondents did not think it proper to proceed thereafter.

Learned counsel has referred to section 14 of 'the Act' to submit that movement of intoxicants without a valid permit or permission is illegal and thus the petitioner should have taken permission from the competent authority before he crossed over to the State of Bihar.

Mr. Gyan Shankar, learned counsel has appeared for the consigner M/s Carlsberg India Private Limited to



support the transportation under valid documents and in reference to the stand taken in paragraph 3 of the counter affidavit filed on behalf of the said Company it is submitted that the entire set of document was in possession of the driver with appropriate endorsement by the Jharkhand State Beverages Corporation Limited but was not believed by the Jamui Police to cause the illegal seizure.

The State of Jharkhand and the Jharkhand State Beverages Corporation Limited have also registered appearance through Mr. Arup Kumar Chongdar and though they have not chosen to file any counter affidavit but speaking through their counsel it is informed that the consignment was being transported under the valid documents and there is neither any doubt on the genuineness of the document or on the lawfulness of the goods transported.

We have heard learned counsel for the parties and we have perused the records.

Though a counter affidavit is filed on behalf of the respondent no.4 i.e. the Superintendent of Police, Jamui which barely runs into 10 paragraphs and purports to justify the impugned action under the cover of non-production of travel documents which stand is not supported from the recital of the



FIR, the Excise Department has not chosen to file any counter affidavit to defend the impugned action.

The impugned seizure has been carried out in purported exercise of powers so vested in the law enforcing agencies within the State of Bihar under the provisions of 'the Act' which under section 14 of 'the Act' restricts movement of intoxicants except under a valid permit or after obtaining transit permission and in section 30(a) imposes a penalty for any such unlawful import, export, transport, manufacture, possession, sale of intoxicants or liquor etc.

Though heavy reliance was placed by Mr. Vivek Prasad, learned Government Pleader No.7 on the provisions of section 14 of 'the Act' to defend the impugned action and to submit that the movement of any intoxicants can only be through a valid permit or under transit permission obtained from the prescribed authority, to a query made by the Court as to whether 'the Act' provides for any statutory permit or whether the Rules as mandated under section 14(4) have yet been framed by the State Government, Mr. Prasad has no answer because though 'the Act' was brought into force with effect from 02.10.2016 yet the statutory rules have yet not been framed.



On a pointed query to Mr. Prasad as to what ought to be the proper course for the law enforcing agencies in the State of Bihar in case a transporter, in course of transportation of liquor on strength of valid travel documents, within the territory of a State where no Prohibition Law is in force like in the present case the State of Jharkhand, mistakenly treads over the territory of the State of Bihar where the Prohibition Law is in force and the vehicle driver is possessed with documents to support a lawful transportation of the goods, whether the authorities of the State of Bihar should have assisted to put the vehicle back to its normal course i.e. to return to the State of Jharkhand and/or to direct the driver to obtain permission from the competent authority or should have hurriedly proceeded for seizure, as done in the present case, no satisfactory answer could come forth.

In our opinion, the documents at Annexure 2 series are sufficient indication of a valid transportation of goods under the dispatch note issued by the Jharkhand State Beverages Corporation Limited from Ranchi to Deoghar, within the State of Jharkhand. The GPS tracking data at Annexure 4 very clearly confirms that the vehicle all along travelled within the State of Jharkhand and just before



reaching Deoghar that it must have mistakenly crossed over to Chandramandi in the district of Jamui within the State of Bihar and having realised the mistake the driver tried to return to the State of Jharkhand when the police authorities intercepted the vehicle and took it into their custody.

While the FIR at Annexure 3 very fairly acknowledges that the driver of the vehicle did inform the Station House Officer that the goods were being transported from Ranchi to Deoghar, there is no such mention in the FIR, either that the goods were being transported without valid documents or that the driver failed to produce the same. In fact, this lacuna is sought to be filled up through the counter affidavit when the Dy. Superintendent of Police, Jamui filing the affidavit under the authority of the Superintendent of Police, Jamui has tried to plug the loopholes to say that the driver failed to produce the documents. This statement again falls by the acknowledgment in paragraph 7 of the counter affidavit where the deponent accepts that somebody came with valid permit as regarding the transportation in question on 27.12.2018. It reflects plain abuse of statutory power that even when the respondents acknowledge that on 27.12.2018 some one produced the valid permits to support the



transportation yet, neither the police authorities in the district of Jamui nor the prescribed authority under 'the Act' bothered to release the vehicle with the goods rather perpetuated the illegality to keep the truck in illegal seizure and relegated the driver of the vehicle to illegal custody.

Article 301 of the Constitution of India guarantees freedom of trade, commerce and intercourse throughout the territory of India. Though powers have been vested in the Parliament under Article 302 to impose reasonable restrictions and Article 304(b), inter alia, enables a Legislature of a State by law, to impose such reasonable restrictions on the freedom of trade, commerce or intercourse as may be required in public interest but then such restrictions have to be subject to the guarantee available under Article 301 of the Constitution of India.

No doubt, with effect from the date, the Prohibition Law was brought into force within the State of Bihar, none was permitted to import, export, transport, consume any intoxicant/liquor except under a valid permit but the case in hand is not a case where the consignment in question was being brought into the State of Bihar rather the consignment started its course at Ranchi within the State of



Jharkhand and was meant to be delivered at the Warehouse of the Jharkhand State Beverages Corporation Limited, Deoghar which again fell in the State of Jharkhand. There was thus no occasion for the consigner to obtain any valid permit from the excise authorities of the State of Bihar nor even if the truck crossed over to the territory of Bihar, could the Excise Department coerce the consigner to obtain a valid permit once it got confirmed from the travelling documents that the consignment was travelling under a statutory permit issued by the Government Corporation in the State of Jharkhand and was meant to be delivered at the Warehouse of the Jharkhand State Beverages Corporation Limited, Deoghar. This position is also admitted by Mr. Arup Kumar Chongar, learned counsel representing the State of Jharkhand as well as the Jharkhand State Beverages Corporation Limited.

This Court has on numerous occasions commented upon the repeated abuse of the Prohibition Law by the statutory authorities but the case in hand is a classic example where neither the district police authorities of Jamui nor the excise authorities are willing to relent and correct the mistake committed even when valid documents supporting the transportation has been brought to their notice and admitted



at paragraph 7 of the counter affidavit. The respondent authorities in the Excise and Prohibition Department, Government of Bihar yet continue to stand by their illegal action as canvased through their counsel Mr. Vivek Prasad.

In our opinion the provisions underlying section 14 of 'the Act', which obliges a transport carrier to obtain a valid permit from excise authority, much relied upon by Mr. Prasad, is unworkable because no Rules have yet been framed to prescribe the procedure nor any form is prescribed to make the provisions effective. In such situation, the reliance by Mr. Prasad, learned Government Pleader No.7 on section 14 was completely misplaced and does not come to the aid of the respondents.

In our opinion, even if the State in its Police Department and the 'Excise Department' have their reasons for suspicion that it was a case of illegal transportation of liquor within the territory of the State of Bihar, once the Station House Officer admits that the driver of the vehicle had informed that the consignment was being transported from Ranchi to Deoghar and the Station House Officer, Chandramandi Police Station, Jamui, does not record any doubt in the statements so made while drawing the FIR, either



he should have allowed the vehicle to return to the territory of Jharkhand and/or even if, section 14 of 'the Act' was pressed in service then, he should have allowed sufficient time to the transporter or the consigner as the case may be, to obtain permits for the cross over into the State of Bihar but the district police did neither, rather mechanically proceeded to seize the vehicle along with the goods to register a police case and took the driver into custody.

We are satisfied to record that in view of the documents present at Annexure 2 series read alongside the G.P.S. tracking data present at Annexure 4, the authorities in the 'Excise Department' in the State of Bihar as well as the Jamui District Police should have exercised prudence rather than to mechanically apply the Prohibition Law to seize the goods which was being lawfully transported and which act is in direct conflict with the Constitutional guarantee provided under Article 301 of the Constitution of India and the impugned action does not get saved by the provisions of Article 304(b) in the attending circumstances.

Mr. Chongdar, learned counsel representing the State of Jharkhand and the Jharkhand State Beverages Corporation Limited has submitted on instruction that the



goods were under a valid transportation and which was being done with lawful documents. Though he admits to the delay in translating such instruction into affidavit but confirms that the goods were being lawfully transported.

We have also noted the submission of Mr. Gyan Shankar, learned counsel appearing for the M/s Carlsberg India Private Limited to submit that the driver was in possession of complete set of travelling documents which left no room for any suspicion either on the nature of the goods transported or on the nature of transportation.

The hearing of the present case initiated on 14.02.2019 and while allowing time to the concerned respondents to file their counter affidavit we expected a prudent response from the authorities in the 'Excise Department' and the Jamui Police who we thought, would correct their course but the stand of the respondent authorities in the 'Excise Department' and the Jamui Police confirms to an obstinate, mechanical and pedantic approach which belies prudence.

For the reasons and discussions above we allow this writ petition and direct the designated court below at Jamui (in case no confiscation proceeding has yet started)



and/or the District Magistrate, Jamui who is the prescribed authority under 'the Act' (in case confiscation proceedings have been initiated) to ensure the release of the Truck bearing Registration No.BR 01 GD 5138 together with the goods i.e. 500 cases of Tuborg Supreme Strong Premium Beer packed in bottles of 650 ml/500 ml within a period of 72 hours of receipt/production of a copy of this judgment, failing which the petitioner would be entitled to damages at the rate of Rs.5,00,000/- (five lacs) per month payable by the Excise Department, Government of Bihar from the date the alleged illegal seizure was carried out until the vehicle together with the goods are released.

Let a writ of mandamus issue accordingly to the authorities in the 'Excise Department' as well as the Jamui District Police.

(Jyoti Saran, J)

(Arvind Srivastava, J)

skpathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.04.2019
Transmission Date	NA

