

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.221 of 2020

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Ram Svarath Rai son of Late Kuldip Rai, Resident of Village - Belwa
Narkatiya, Jandovasti, Police Station- Piprahi, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The Collector, Sheohar.
3. The Excise Superintendent, Sheohar.
4. The Motor Vehicle Inspector, Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Madhubala Verma
For the Respondent/s : Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 31-01-2020

Heard Ms. Madhubala Verma, learned counsel for the
petitioner and Mr. Prashant Kumar, learned A.C. to S.C.-5,
appearing on behalf of the State.

This writ application has been preferred with a prayer
for a direction to the respondents to release Hero Deluxe
Motorcycle bearing Registration No. BR55A-7167, which has
been seized in connection with C2-116 of 2018, registered under
Section 30(a) of Bihar Prohibition and Excise Act, 2016, as



amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act).

The relief, as prayed for by the petitioner in paragraph No.1 of the writ application reads as follows :-

“1. That by this writ application the petitioner crave indulgence of this Hon'ble Court for a direction to the release of the Motorcycle (Hero Deluxe) to the petitioner bearing Registration No.BR55A-7167, Chasis Number MBLHA11ATF9J29756, Engine No.HA11EJF9J11355 seized in connection with C2-116 of 2018, registered under Section 30(a) of Bihar Prohibition and Excise Act, 2016.”

The prosecution case is that on 19.12.2018, after having received secret information to the effect that illicit liquor is being transported by a motorcycle, a motorcycle was intercepted and on search being made, 18 litres of illicit liquor were recovered, leading to registration of the case under Section 30(a) of the Act.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the said vehicle has been brought on record, as Annexure-2 to the writ application.

Learned counsel for the respondents relying upon the counter affidavit filed on 27.01.2020, submits that confiscation proceeding has been initiated, however, he draws our attention to Annexure-A series, which is order dated 17.10.2019 passed in



Excise Case No.116 of 2018 whereby the proposal for confiscation proceeding has been transmitted by the Superintendent, Excise, Sheohar vide letter No.97 dated 20.02.2019 to the Collector, Sheohar and the motorcycle in question has been confiscated and the Superintendent, Excise, Sheohar has been directed to get the valuation of motorcycle done. Learned counsel for the State further submits that now the final order of confiscation has been passed, hence the writ application is not maintainable as there is a remedy of Appeal under Section 92(2) of the Act.

Considering the rival submissions made by the parties, we are of the view that at present, the application has become infructuous, in view of the final order, having been passed in confiscation proceeding. Hence, the petitioner is now no longer the owner of the vehicle and in view of the provision under Section 61 of the Act, the vehicle in question now vests in the State of Bihar.

It is well settled law that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary in nature and it has to be exercised, under self imposed restrictions and has to be sparingly exercised where alternative and efficacious remedy is available.



However, the discretionary jurisdiction under Article 226 can be exercised in spite of availability of aforesaid remedy in exceptional circumstances, those cases has been explained by Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.**, reported in **(1998) 8 Supreme Court Cases 1**. Paragraph 15 reads as follows”

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

We do not consider the present case within the exceptional circumstances as enumerated in the case of Whirlpool Corporation (supra). Since there is a provision of Appeal under Section 92(2) under Chapter IX of the Act before the Excise Commissioner against the order of the Collector, the petitioner is at liberty to exercise the alternative remedy of appeal. We dispose



of the present writ application with a liberty to the petitioner to file Appeal, along with petition for condoning the delay in filing the Appeal within four weeks before the Excise Commissioner, Government of Bihar, Patna. If any such Appeal is filed on behalf of the appellant then the learned Appellate Authority (Excise Commissioner) may consider to condone the delay, in view of the fact that the writ application was pending before this Court and dispose of the appeal within a further period of ten weeks after giving opportunities to both sides in accordance with law.

It is made clear that we have not expressed any opinion on the merit of the case. The petitioner will be at liberty to raise his all contentions before the appellate authority.

Accordingly, with the liberty aforesaid, this writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.03.2020
Transmission Date	NA

