

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8033 of 2021

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Khawaja Md. Fakharuddin, Son of Maulana Md. Idris, resident of
Lakshaminiya, P.S. Kusheshwar Asthan, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
2. The Excise Commissioner, Government of Bihar, Patna.
3. The District Magistrate cum Confiscating Authority, District Darbhanga, Bihar.
4. The Senior Superintendent of Police, District Darbhanga, Bihar.
5. The Officer in Charge cum Investigating Officer, P.S. Bahadurpur, District Darbhanga, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. Kumar Manish, S.C. 5

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(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-06-2021

Heard the parties.

Petitioner has prayed for following relief(s):-

- “(i) Quashing of the Notice to show cause dated 02.09.2020 (Annexure-2) in connection with Confiscation Case No. 126 of 2020 whereby the petitioner has been asked to show cause as to why on account of seizure of the vehicle bearing Registration No. BR 07U-5405, the vehicle of the petitioner be not confiscated;
- (ii) Quashing of the order of Confiscation dated 15-19.09.2020 (Annexure-3) passed by the Collector cum District Magistrate, Darbhanga in Excise Confiscation Case No. 126/2020 (State



of Bihar through Senior Superintendent of Police Vrs. Khawaja Md. Fakhruddin) whereby, the vehicle of the petitioner bearing Registration No. BR-07U-5405 has been confiscated under Section 58(2) of the Bihar Prohibition and Excise Act, 2016;

(iii) Stay of the operation of the impugned of confiscation dated 15-19.09.2020 during the pendency of the writ application and for restoration of the vehicle in favour of the petitioner provisionally; and/or

(iv) Restraining the respondents from creating in 3rd party right during the pendency of the present writ petition.”

A preliminary objection is raised by learned counsel for the State that petitioner has approached this Court without exhausting the statutory remedy of appeal/revision against the impugned order.

However it is submitted by learned counsel for the petitioner that Confiscating Authority has passed the order in flagrant violation of the principles of natural justice as well as *de hors* of procedural Rules and has not considered the defence of petitioner as given in his reply to show cause, as such the present writ petition is maintainable although petitioner has not availed the statutory remedy of appeal/revision provided under the Act.

After hearing both the parties, this Court is of the view that petitioner should exhaust his statutory remedy of appeal/revision against the impugned order before approaching this Court in its writ jurisdiction.



The writ petition is disposed of with liberty to petitioner to avail the remedy of appeal against order passed by the District Collector-cum-Confiscating Authority, Darbhanga, before the Appellate Authority, and if any, such appeal is filed within four weeks, the Appellate Authority shall condone the delay in filing appeal as the matter remain pending before this Court and shall decide the appeal on its own merit preferably within eight weeks from the date of its filing.

During pendency of appeal, the confiscated vehicle shall not be auction sold, if not already auction sold.

With aforesaid liberty, the writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

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

