

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6873 of 2017

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Vikash Kumar Son of Shri Lalji Prasad Singh Resident of Village-
Bhagwanpur Deshua, P.S. Ujjiyarpur, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary to the Government of Bihar,
Department of Excise & Prohibition, Vikash Bhawan, Patna.
2. The Commissioner of Excise, Bihar, Patna.
3. The Collector, Samastipur.
4. The Superintendent of Excise, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Advocate

For the Respondent/s : Mr. P.K. Shahi, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 04-05-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner is aggrieved by cancellation of his
license and forfeiture of his advance license fee based on
order of the Collector, Samastipur, dated 14.02.2012, duly
affirmed by the Appellate Authority on 24.11.2014, in Excise



Appeal Case No. 7 of 2012. The petitioner's revision application before the Board of Revenue has also been rejected under order dated 07.09.2015.

3. It is submitted by Mr. Satyabir Bharti, learned counsel appearing on behalf of the petitioner, that solely relying upon verification of stock register, the impugned action has been taken pursuant to an alleged sale of liquor on a dry day, for which raid was conducted by the police authorities on 07-11-2021.

4. The petitioner lodged a complaint dated 09.11.2011, before the District Collector, Samastipur, regarding his false implication by the police on extraneous considerations.

5. On 01.12.2011, the Superintendent of Excise, Samastipur under communication, bearing letter No. 1467, placed on record in the criminal case, decisions of the Commissioner Excise that, if any shop was found open after the business hours, as per license, then intimation was required to be sent by the police to the Collector or Assistant Commissioner Excise for taking appropriate action. The Superintendent Excise, accordingly, requested for having the seal removed from the petitioner's composite liquor shop, so that the liquor in the shop could be tallied with the brand and



batch number supplied to the petitioner by the Bihar State Beverages Corporation Limited (for brevity 'BSBCL').

6. The Sub-Divisional Officer, Patori, has also found in an inquiry conducted by him that on 07.11.2011 the petitioner's shop was closed. The inquiry, therefore, belies the allegation levelled by the police authorities.

7. A show-cause dated 19.01.2012, was served upon the petitioner by the Superintendent Excise, Samastipur, allowing the petitioner to file his response, so that the matter could be placed before the Collector. In view of inaction on the part of the Authorities thereafter petitioner was constrained to file a writ petition bearing C.W.J.C. No. 434 of 2012. The same was disposed of directing the Collector, Samastipur to consider the show-cause and decide the same forthwith.

8. The orders impugned in the writ petition were passed thereafter, which are perverse, without reference to any material on record and show total non-application of mind.

9. The penal consequences arising out of such orders are unsustainable and liable to be quashed.

10. The learned counsel for the State, on the other



hand, has opposed the prayer in the writ petition. It is submitted that the petitioner's shop was found open on a dry day. Upon physical verification of the stock, the Authorities have come to the conclusion regarding business being carried on even on a dry day and after due opportunity to the petitioner, the impugned orders have been passed, which require no interference by this Court.

11. On considering the rival submissions, this Court would find that order of the Collector dated 14.02.2012, does not take into consideration any of the submissions, which were advanced on behalf of the petitioner. The submissions have merely been recorded in the earlier order of the Collector dated 09.02.2012. Order of the Collector shows total non-application of mind to the explanation submitted by the petitioner and the Collector, merely relying upon the alleged stock verification and allegations made in the police case, which precipitated action against the petitioner has proceeded to direct for cancellation of the petitioner's license and forfeiture of the license fee etc. deposited by the petitioner. It is also pertinent that there was no show cause issued for the alleged defects, which were the grounds for cancellation.



12. The Appellate Authority as well as Revisional Authority have also passed orders thereupon affirming the order of the Collector.

13. The Appellate Authority instead of considering any material in support of the allegations which it was required to do has held that the petitioner's explanation appears to be misleading and untenable .

14. The Revisional Authority has committed the same mistake and also affirmed the order on the premise that the petitioner has not put forth any acceptable or legally tenable facts and circumstances.

15. The order of the Collector in the above facts and circumstances is *ex facie*, suffering from non-application of mind, showing no consideration of the plea set forth by the petitioner in his explanation and perverse, being unsustainable in the eyes of the law.

16. The orders of the Appellate Authority and Revisional Authority affirming the illegal order of the Collector are also unsustainable for the reasons noted above.

17. This Court would quash the three orders dated 14.02.2012 passed by the Collector, Samastipur, order dated 24.11.2014 passed by Excise Commissioner in Excise Appeal



No. 7 of 2012 and order dated 07.09.2015 passed by the Revisional Authority and direct the respondent-Authorities to ensure refund to the petitioner of his license fee and other deposit/s, expeditiously and positively within eight (8) weeks’ from the date of receipt/production of a copy of this order.

18. Accordingly, the writ application is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

rajkishore/-

AFR/NAFR	N/A
CAV DATE	N/A
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