IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6414 of 2023

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1. Shyamadhan Traders Private Limited through its Manager-Vishal Pandey @ Vishal Kumar Pandey aged about 28 Years Old, Male, S/o-Kamlesh Kumar Pandey, Resident of -Babhnauli, P.S.-Balia, District-Balia (Uttar Pradesh)
2. Westwell Gases Private Limited, Room no.-201, 2nd Floor, Century Towers, 45 Sheikshpeare Sarani, Kolkata-700017, West Bengal, through, its Director-Mukesh Kumar, aged about 58 Years old, Male, S/o-Shambhunath, Resident of 21, Bansdroni, Government Colony, Budgebudge-1, South 24, Pargana, Kolkata, West Bengal.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise Department, Patna, Bihar.
2. The Principal Secretary, Home Department, Patna, Bihar.
3. The Director General of Police, Patna, Bihar.
4. The District Magistrate, Kishanganj.
5. The Superintendent of Police, Kishanganj.
6. The Deputy Superintendent of Police, Kishanganj.
7. The S.H.O., Kishanganj P.S., Kishanganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhakar Singh, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC 11

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-05-2023

The petitioners assert that they are engaged in the trade of Indian Made Foreign Liquor (hereinafter referred to as 'IMFL'), which was transported by a valid pass through the

District of Bihar. The vehicle was seized as per the FIR produced at Annexure-3. The transport pass and the invoice copy were annexed as Annexure-1. Annexure-1 is a transport pass issued in triplicate for transport of IMFL from the manufacturer. Invoice was also issued in favour of the buyer at Coochbehar, while the consignment originated from Howrah, both in West Bengal. The consignment note is produced at Annexure-2 and this consignment has to pass through the State of Bihar, particularly, Kishanganj District. According to the petitioners, when the pick-up van, containing the consignment, was crossing through Kishanganj, the Sub Inspector of Police, Kishanganj Police Station stopped the vehicle and seized the liquor which was validly transported. Based on the documents produced, it is asserted that there was no sale of liquor within the State of Bihar and the goods in the pick-up van were expected to cross the State of Bihar from Howrah and reach Coochbehar, to which destination the liquor was sold. The petitioners, on the basis of the aforesaid documents, claim release of the liquor which was not intended for sale within the State of Bihar where there is prohibition imposed.

2. The learned Government Pleader, however, submits that no transit pass, as required under Section 14 of the

Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act') read with Rule 7 of the Bihar Prohibition and Excise Rules, 2021 (hereinafter referred to as the 'Rules'), was taken by the petitioners. Section 14 of the Act speaks of movement of intoxicants and specifies that no liquor, intoxicant or final product shall be imported, exported or transported or transited within or from outside or through the State, except with a valid permit and subject to such duty, if any, payable. Sub-section (2) also provides that when there is a consignment of liquor transported from a place outside the State of Bihar to another such place, the driver or any other person in-charge of the vehicle should obtain transit permission in the prescribed manner from the authority at the first check post, falling enroute, at the point of entry into the State. The same shall also be surrendered to the authority at the last check post, before leaving the State. In the event of failure to do so, then it is deemed that the liquor or intoxicant so transported has been sold or disposed off by the owner or the person in-charge of the vehicle, within the State of Bihar.

3. Hence, when the liquor is transported through the State of Bihar, a transit pass has to be obtained from the entry check post and the same surrendered at the exit check

post. This is specifically introduced to prevent any sale of liquor within the State, without payment of tax or in the present situation, when prohibition is in place, without sale within the State.

4. The prescription as provided under Section 14 of the Act is available in Rule 7 of the Rules. Rule 7 under Chapter-4 specifically prescribes the manner in which transit and transportation of intoxicants, ENA/industrial alcohol etc. has to be carried out. Sub-rule (1) requires a transit pass in Form EL-3B at the entry point, upon submission of an application in Form EL-3A. The transit pass issued under Form EL-3B also has to be surrendered before exit, at the last destined exit point of the State of Bihar within 24 hours; failure of which would entail penal provision under Chapter-VI of the Act. Sub-rule (3) also provides for a GPS enabled digital lock installed in such manner and on payment of such fee, as may be prescribed by the Excise Commissioner. Sub-rule (4) also requires even empty bottles to be carried, in digitally locked containers; failure of which will attract penal provisions under Chaper-VI of the Act.

5. Sub-rule (5) empowers an officer within the meaning of Section 73 of the Act to intercept a vehicle and

require, the transit pass issued at the entry check post or any other papers or documents relating to transportation of consignment to be furnished. On such interception, if there is a reasonable suspicion of violation of the provisions of the Act or Rules, then the officer can also detain the vehicle for further enquiries. Hence, there is a detailed procedure prescribed under the Rules for the purpose of applying for a transit pass, its issuance at the entry point and the surrender at the exit point.

6. The petitioners do not have a contention that they were issued with a transit pass. The petitioners, in fact, rely on a judgment of another Division Bench of this Court in CWJC No. 18026 of 2017, titled as **M/s Global Trading Concern Pvt. Ltd. vs. The State of Bihar & Ors..** Therein a similar consignment was booked and the Division Bench requested the learned Advocate General to verify the genuineness of the transaction i.e. genuineness of the transport made of a consignment of foreign liquor through the State of Bihar after the Bihar Prohibition and Excise Act, 2016 came into force. The Court also recorded that in the course of hearing, it was informed that the State has found the petitioner to be a genuine registered company with a registered office in the country of Nepal. The petitioner was allowed release of the

consignment on furnishing a bank guarantee issued from a Bank in Nepal to the tune of Rs. eight lakhs and the consignment was allowed to be transported to Nepal. It was also directed that, after the consignment is unloaded, the vehicle has to be returned to be kept in the custody of District Magistrate. The Division Bench also observed that the directions were provisional in nature and that the State of Bihar would be entitled to proceed against the petitioner in accordance with law.

7. We do not find any binding precedent insofar as the cited judgment is concerned; which only provisionally directed the consignment to be released that too on furnishing of a bank guarantee, for the value of the consignment and directed that the vehicle should be returned and produced before the detaining authority for further proceedings. This was also on the submission made by the State that the petitioner is a genuine transporter. More particularly, it has to be observed that though Section 14 and the Act of 2016 were available, as on the date of the seizure of the commodity and also as on the date of judgment, there was no prescription, as per Section 14, available at that point. The Rules came in the year 2021 wherein there is a specific prescription of how to apply for and

obtain a transit pass and also mandating the surrender of the pass at the exit check post.

8. In the present case, there is not even a whisper about an application having been made at the entry check post and obviously, there is neither production of a transit pass when the vehicle was seized nor even, in the above writ petition. We find no reason to adopt the procedure as adopted in CWJC No. 18026 of 2017.

9. We are of the opinion that the petitioners would have to subject themselves, the vehicle and the contraband, to the proceedings initiated by the authorities under the Act. In this context, we once again refer to Section 14, which in the absence of surrender of the transit pass, deems the commodity having been sold within the State. There was not even a transit pass taken at the entry check post and there is absence of declaration at the entry check post, by way of an application made in the prescribed form for issuance of the transit pass, as provided under Rule-7. In the absence of such transit pass, the presence of the vehicle within the State of Bihar and its detention would raise a presumption of the commodity having been carried into the State of Bihar, where there is prohibition imposed, for the purpose of sale of such contraband

liquor. We find no reason to entertain the writ petition and reject the same.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17.05.2023
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