

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6576 of 2023

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Suraj Choudhary Son of Saryug Choudhary, Resident of Village Kajichak P.S.
Maheshkhunt District Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Patna.
2. The Excise Commissioner, Department of Excise, Vikash Bhawan, Baily Road, Patna.
3. The Collector cum District Magistrate, Khagaria.
4. The Superintendent of Police, Khagaria.
5. The S.H.O. Maheshkhunt, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bharat Bhushan, Advocate
For the Respondent/s	:	Mr. Kumar Manish, SC 5
		Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

6 01-09-2023 In the instant writ petition, the petitioner has prayed
for the following relief(s):-

“That this is an application for issuance of appropriate writ/orders/direction in the nature of writ of certiorari to quash the order dated 01.09.2022 (Annexure-4) passed by the Learned Additional Principle Secretary, Department of Excise, Patna in Revision Case No. 173/2022 arising out Maheshkhunt P.S. Case No. 35/2019 dated 19.03.2019 whereby and where under the learned Revisional Court has refused to release the house of the petitioner and also confirm the order passed by Learned Collector cum District Magistrate Khagaria (Annexure-2) as well as



*order passed by Learned Excise Commissioner,
Patna (Annexure-3). ”*

02. The petitioner was subjected to proceedings for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended Act, 2018 (for short ‘Act 2018’) in Maheshkhunt P.S. Case No. 35 of 2019 dated 19.03.2019. The concerned Police Officer was required to exercise power under Section 58(2) read with Section 82 of the Act, 2018 insofar as furnishing of report to the concerned Excise Authority and so also to the jurisdictional District Collector, whereas such report has been furnished on 02.07.2019/23.07.2019 to the respective authorities. Section 82 of the Act, 2018 mandates furnishing of such report within 24 hours from the date of alleged allegations or incident. On this ground, the petitioner sought for interference with the impugned order dated 01.09.2022.

03. *Per-contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that it is not disputed that the petitioner is involved in the alleged offences under Section 30(a) of Act, 2018. However, he has not disputed the delay in submission of report by the seizure authority to the concerned Excise Authority and Jurisdictional District Collector. Therefore, there is no infirmity in the impugned action. It is also submitted that the petitioner has not raised the aforementioned



contention before the Confiscating Authority, Appellate Authority and Revisional Authority and for the first time, petitioner is raising such an issue that there is violation of Section 58(2) read with Section 82 of the Act, 2018.

04. Heard the learned counsel for the respective parties.

05. The petitioner was involved in the Maheshkhunt P.S. Case No. 35 of 2019. He was subjected to confiscation proceedings, appellate proceedings and revisional proceedings. In all the three proceedings, petitioner suffered orders on 10.12.2021, 18.04.2022 and 01.09.2022, respectively hence the present petition. One of the legal issues raised by the petitioner in the present case is that initial confiscation proceedings is contrary to Section 58(2) read with Section 82 of the Act, 2018 to the extent that seizure authority was required to forward a report to the concerned Excise Authority and Jurisdictional District Collector within 24 hours from the alleged incident.

06. Having regard to the dates and events, the alleged incident of seizure took place on 19.03.2019 whereas, the report has been submitted on 02.07.2019/23.07.2019. Therefore, there is an infirmity in not complying with Section 58(2) read with Section 82 of the Act, 2018. It is a question of law which could



be raised at any point of time. The present writ petition is first instance of court of record. Therefore, the petitioner is permitted to take up the above question of law and plead in the present petition. It is necessary to reproduce Section 58 and Section 82 of the Act, 2018, which read as under:-

“58. Confiscation by District Collector.—*(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*

(2) On receipt of the report under subsection (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or



in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.

[Underline supplied]

82. Reports of arrests, seizures and searches.—Every Police Officer upon making any arrest, search or seizure shall submit a report to the Collector and to the excise officers empowered under Section-73 within twenty four hours.”

[Underline supplied]

07. Section 58(1) stipulates that the officer seizing and detaining such of those properties shall, without any reasonable delay, submit a report to the District Collector who has jurisdiction over the said area. In the aforementioned law, statute mandates sending such report. In other words, the word used is ‘shall’, therefore, officer seizing movable or immovable property/properties shall submit report and comply the aforementioned provision without undue delay. Similarly, Section 82 mandates every police officer who is involved in the arrest, search or seizure to submit a report to the jurisdictional



District Collector and to the Excise Officer while invoking power under Section 73 within 24 hours.

08. The official-respondents have not adhered to the aforementioned statutory provisions insofar as submission of report before the competent authority within the time limit stipulated therein. Accordingly, the petitioner has made out a case. Hence, the impugned order of the Revisional Authority dated 01.09.2022, Appellate Authority's order dated 18.04.2022 and Confiscating Authority's (District Collector) order dated 10.12.2021 are set aside and writ petition is allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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Ashish/-

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