

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12995 of 2021

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Nand Kishore Poddar, Son of Late Ram Jiwan Poddar Resident of D.N. Singh Road, Lakhi Babu Ka Bagicha, Kharmanchak, Police Station- Kotwali, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner of Excise Department of Excise and Prohibition, Govt. of Bihar, Patna.
3. The Superintendent of Excise Bhagalpur.
4. The District Magistrate Bhagalpur.
5. The Anchaladhikari, Jagdishpur P.O. and P.S.- Jagdishpur, District- Bhagalpur.
6. The Sub- Inspector of Excise Office of Excise Superintendent, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP-7)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-09-2023

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:-

"I. For issuance of an appropriate writ/writs quashing the order dated 02.07.2021 passed by District Magistrate, Bhagalpur (Respondent No. 4) vide Memo No. 336 dated 7.7.2021 under signature of Superintendent, Excise, Bhagalpur contained in Annexure- 11 by which direction has been issued to Excise Superintendent, Bhagalpur to destroy the denatured spirit in presence of Anchal Adhikari within 15 days. It is further ordered



that petitioner if aggrieved may file appeal/ revision before Excise Commissioner within 90 days.

II. For issuance of appropriate writ/ writs, directing the concerned respondents to open the sealed godown and to release the seized spirit for sale as the petitioner is valid licence holder.

III. For issuance of appropriate writ/ writs directing the concerned respondents to make payment of cost of spirit amounting to two lakhs sixty thousand (Rs. 2,60,000/-) together with panel/ stipulated interest on the said amount in favour of the petitioner if same is destroyed in view of the facts that spirit in question used for furniture painting was purchased after due permission/ sanction of authority and that too during existence of valid licence.

IV. For any other relief/ reliefs for which the petitioner is found to be entitled for."

3. Perusal of the impugned order it is crystal clear that petitioner has statutory remedy of appeal before the appellate authority under Section 92 of the Bihar Prohibition & Excise Act, 2016 and further he has remedy of revision as well. Without exhausting such remedy petitioner has rushed to this Court.

4. Learned counsel for the petitioner tried to apprise this Court that he was a licence holder. However, he could not apprise as on 31.03.2016 he was holding any valid licence or not? These matters are to be adjudicated in the quasi-judicial proceedings. Writ Court cannot examine the same. Therefore, the present writ petition stands disposed of reserving liberty to the petitioner to invoke remedy under Section 92 of the Bihar



Prohibition & Excise Act, 2016. The appellate authority is hereby directed to take note of Section 14 of the Limitation Act, 1963 for the purpose of condonation of delay in filing appeal.

5. With the above observation, the present petition stands disposed of.

6. At this stage, we noticed that the concerned respondents are likely to destroy the seized material in view of the impugned order. The same shall be examined by the appellate authority while deciding the petitioner's appeal. Till appeal is decided, the concerned authorities are hereby directed to not to destroy the seized property. Petitioner is hereby directed to file appeal before the appellate authority under Section 92 of the Bihar Prohibition & Excise Act, 2016 within a period of four weeks from today.

7. Pending Interlocutory Applications, if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	12.09.2023
Transmission Date	N.A.

