

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8913 of 2023

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Ajit Kumar Son of Narendra Singh Resident of Village- Kotwa, P.S. Kotwa,
District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Bihar Excise Department at Patna.
2. The Excise Commissioner, Bihar Excise Department, Patna.
3. The Collector, District West Champaran at Bettiah.
4. The Superintendent of Police, Bagaha, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rahul Singh
For the Respondent/s : Mr. Vivek Prasad (Gp 7)

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

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

2 27-06-2023 In the instant petition, the petitioner has prayed for
following relief:

*“ 1. That this writ application is being filed
on behalf of above named petitioner for
giving direction to respondents to release
Hero Splendor bearing Registration No.
BR05AN-3271, Chesis No.
MBLHAW128MHB76792, Engine No.
HA11EYMHB74332 which was seized in
connection with Gowardhana P.S. Case No.*



*11/2023 for offence u/s 30(a) Bihar
Prohibition and Excise Act.”*

2. For issuance of Writ of Mandamus two ingredients are mandatory, namely, demand/representation/application before the Competent Authority/Forum read with the statutory duty assigned on the Authority/Forum. The petitioner has not approached the concerned authority with reference to his grievance in the present petition. Therefore, Writ of Mandamus cannot be issued unless and until there is a demand before the Competent Authority.

3. In this regard, the Hon'ble Apex Court in the case of *Mani Subrat Jain V. State of Haryana reported in (1977) 1 SCC 486* in paragraph 9 held as under:

“9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England



4th Ed. Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors.(1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198.”

4. Further the Hon'ble Apex Court in the case of ***M/s Hero Motocorp Ltd. vs. Union of India and Ors. reported in AIR 2022 SC 5572*** in para no. 60 to 63, 70 &71 held as under:

“ 60. This Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra) had an occasion to consider when a writ of mandamus could be issued. This Court held that:

“15.There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a



legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See Lekhraj Satramdas Lalvani v. Deputy Custodian- cum- Managing Officer [AIR 1966 SC 334 : LLJ 247] and Umakant Saran Dr v. State of Bihar [(1973) 1 SCC 485 : AIR 1973 SC 964]). In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same.” [emphasis supplied]

61. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent-Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in the case of K.S. Jagannathan and another (supra) as under:

“20. There is thus no doubt that the High



Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its



discretion.”

62. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion malafidely or on an irrelevant consideration.

63. This position was again reiterated by this Court recently in the case of Bharat Forge Ltd. (supra) as follows:

“18. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public 25 duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or



a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.” [emphasis supplied]

70. It could thus be seen that in none of the aforesaid cases, the issue as to whether, on account of change in the law, the State was bound to stand by its representation made under the earlier law even when the change in law does not permit it to do so, fell for consideration. As against this, this Court, in a catena of judgments, including two Constitution Bench judgments, a four-Judge Bench judgment and various judgments of learned three judges, have consistently held that promissory estoppel would not apply against the exercise of legislative powers of the State. As such, none of the judgments cited, in our view, would be of any assistance



to the cases of the appellants.

71. Insofar as the contention of Shri S. Ganesh, learned Senior Counsel, that the Union should have issued exemption notification as provided under Section 11 of the CGST Act is concerned, we find that under the said provision, a discretion is vested in the Central Government, which is to be exercised on the recommendations of the GST Council. A writ of mandamus cannot be issued to the Central Government to exercise power under Section 11 of the CGST Act in a particular manner. In any case, it is a matter of policy which has to be determined by the Union/State while taking a decision as to whether it should grant exemption from payment of CGST or make a budgetary allocation for refund of the tax paid. In any case, such power can be exercised by the Central Government only on the recommendations of the GST Council. As already discussed herein above, the Central Government was not bound to continue with a representation made by it in 2003 in view of the change of law by the enactment of the CGST Act. However, in order to partly honour the representation made by it, it has decided to refund 58% of the CGST paid by the entities. It is more than settled that this Court cannot interfere in



policy matters of the Government unless such policy is found to be palpably arbitrary and irrational. In that view of the matter, we do not find that the claim made on the basis of Section 11 of the CGST Act is of any substance.”

5. Therefore, the petitioner has not made out a case.

6. Accordingly, the present petition stands disposed of as not maintainable, reserving liberty to the petitioner to submit a detail application/representation to the competent authority for release of vehicle. If such application is submitted before the competent authority, the competent authority is hereby directed to decide the petitioner's grievance at the earliest.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

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