

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14791 of 2021

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Ram Babu Ray, Son of Newalal Ray, Resident of Village- Bedauliya
Mushahari @ Radhanagar Mushahari, Police Station- Mushahari, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Patna, Bihar.
3. The Collector-cum-District Magistrate, Muzaffarpur.
4. The Deputy Collector, Land Reform (DCLR), Muzaffarpur.
5. The Superintendent of Police, Muzaffarpur.
6. The Excise Superintendent, Muzaffarpur.
7. The Inspector cum S.H.O. Brahampur Police Station, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sada Nand Roy, Adv
For the Respondent/s : Mr. Kumar Manish (SC-5)

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

Date : 18-04-2023

Heard learned counsel for the petitioner and learned State
counsel.

2. The petitioner is concerned with release of his
Mahindra Scorpio vehicle bearing Registration No. BR-06-PD-
9548, Chassis No. MA1TA2TDKJ2G18230, and Engine No.
TDJ4G75313 which has been confiscated under order dated
21.09.2020 passed by the Deputy Collector Land Reforms



(DCLR), East Muzaffarpur in Confiscation Case No. 5 of 2020-21 arising out of *Brahampur* P.S Case No. 370 of 2019 registered for offences under Sections 414, 411 and 412 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as “Act”).

3. The order of confiscation has been affirmed in Excise Appeal Case No. 159 of 2021 by the Excise Commissioner, Patna as also by the Additional Chief Secretary, Excise, Patna in Excise Revision Case No. 35 of 2021.

4. At 13:20, on 26.10.2019, the informant (police official) received information regarding a white *Scorpio* vehicle being stolen. He proceeded to verify the information and take necessary action. He reached the *Chandni Chowk* over-bridge when he received further information that the vehicle was tagged/enabled with Global Positioning System (GPS) and that two young males had disembarked from the vehicle and fled away.

5. It is alleged that from the white *Scorpio*, one 375 ml bottle of Royal Stag and 100 ml whisky from another bottle of 180 ml of Premium Black Superior Whisky along with an empty bottle of 8 PM whisky were recovered. The total quantum of alleged recovery thus is 475 ml illicit liquor.



6. It is the petitioner's case that the vehicle was hired from the petitioner on 25.10.2019 for going to Siwan. On the way back, the driver stopped at about 12:30 in the afternoon on 26.10.2019 at a petrol pump situated on *Sadatpur* National Highway 28, in Muzaffarpur for replenishing diesel in the vehicle.

7. It is the petitioner's case that at the petrol pump after filling up diesel in the vehicle, his driver requested the passengers to pay for the diesel, which infuriated the passengers, who started abusing the nozzleman of the petrol pump as well as the driver and on threat of gunpoint, they took the vehicle away.

8. The petitioner's vehicle bearing Registration No. BR-06-PD-9548, Chassis No. MA1TA2TDKJ2G18230, and Engine No. TDJ4G75313 was taken away and an FIR of the incident, though with some variation regarding factual details, was lodged and registered as *Kanti P.S Case No. 802 of 2019*. When the petitioner came to learn about the incident, he immediately switched off the GPS installed in the vehicle so as to disable the vehicle's functioning, whereupon the vehicle stalled. The location of the vehicle was also ascertained from the GPS installed in the vehicle and intimation given to the *Brahampur*



police station.

9. About one hour later, the vehicle and alleged 475 ml of illicit liquor was recovered from the vehicle in question, and FIR was lodged as *Brahampur P.S Case No. 370 of 2019*. The petitioner's vehicle was seized and subsequently confiscated.

10. This Court considers it appropriate to record that the search and seizure of the vehicle or property was effected while the provisions of the Bihar Prohibition and Excise Act, 2016/, as amended by the Bihar and Prohibition and Excise (Amendment) Act, 2018 was applicable.

11. The submission of the learned counsel for the petitioner is that the prosecution story in the two FIRs arising out of *Kanti P.S Case No. 802 of 2019* and subsequent *Brahampur P.S Case No. 370 of 2019* corroborates the sequence of events as stated by the petitioner. In fact, the petitioner is a victim of the circumstances. His vehicle was looted, the authorities were having knowledge of the vehicle being looted. He in fact helped the police authorities in apprehending the vehicle by disabling the GPS, which led to stalling of the vehicle facilitating its seizure. In the circumstances, the order of confiscation and its affirmation in appeal and revision is without any basis, a perverse conclusion and unsustainable under the



provisions of the Act.

12. Learned State counsel, on the other hand, submits that the order of confiscation dated 21.09.2020 passed by the DCLR is a speaking order. The petitioner was afforded opportunity before the order of confiscation was passed. The petitioner has also exhausted his statutory remedy of appeal and revision. The order having attained finality, this Court should not exercise discretionary writ jurisdiction, since the confiscation is pursuant to a decision making process in accordance with the Act.

13. On consideration of the rival submissions, this Court would find substance in submissions advanced on behalf of the petitioner. Though statute under which the confiscation has been done, does not offer any quantum based relief, this Court would consider it worthwhile to also take judicial notice of the fact that the alleged recovery of illicit liquor from the petitioner's vehicle is of a minuscule quantity of 475 ml. The recovery is preceded by alleged forcible taking away of the vehicle from the petrol pump in the incident giving rise to *Kanti P.S Case No. 802 of 2019*. The fact that the petitioner's vehicle was looted stands specifically corroborated by the prosecution case as alleged in *Brahampur P.S. Case No. 370 of 2019* lodged for the offences under the Act, which led to seizure and confiscation of the



petitioner's vehicle. The relevant extract of the FIR reads as follows:

"इस प्रकार लूट की गाड़ी प्रतीत होता है जिसे विधिवत जप्ती सुची तैयार कर जप्त आते हुए आवश्यक कारवाई कर थाना के लिए प्रस्थान किया । थाना पहुँचने पर औपचारिक प्राथमिकी दर्ज की जायेगी।"

English translation reads as follows:

"Hence, the aforesaid vehicle appears to be looted one which was duly seized after preparing a seizure list and thereafter, proceeded to the police stations for further action. The formal F.I.R. will be registered after reaching the police station."

14. It is also evident from this FIR that the vehicle was having GPS installed and had been abandoned on the *Chandni Chowk* over-bridge by the two persons, who fled away.

15. The petitioner, therefore, approached this court earlier by filing *CWJC No. 593 of 2020* for release of his vehicle. The writ petition was disposed of on 08.07.2020 with certain directions to the Confiscating Authority to conclude the confiscation proceedings within stipulated time frame leaving the remedies thereafter open to the petitioner.

16. The petitioner, thereafter, appeared before the Confiscating Authority, bringing the above noted facts to the notice of the Confiscating Authority and claiming release of his



vehicle. The vehicle however was confiscated under order dated 21.09.2020 passed by the Confiscating Authority (Respondent No. 4).

17. The petitioner filed an appeal under Section 92 of the Act. The appeal has been rejected on 23.03.2021. Whereafter revision was filed on 15.04.2021, which was rejected on 13.07.2021.

18. The Court would firstly consider whether the order passed by the Confiscating Authority, the Appellate Authority and the Revisional Authority are legally sustainable or not in view of the provisions contained in Section 56 of the Act.

19. Section 56 as it then existed provides that when an offence has been committed under the Act, any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor shall be liable to be confiscated, but in the manner prescribed under the provisions of the Act. The provision prescribing the manner for confiscation are to be found in Section 58. This Court, therefore, considers it apposite to extract Section 56 and Section 58 of the Act, which read as follows:

“56. Things liable for confiscation.-Whenever an offence has been committed, which is punishable under this Act.



(a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquor;

(b) any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor; or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation.”

“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 sub-section (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 sub-section (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.”

20. The requirement of natural justice is thus implicit in the Act. The collector is required to give a reasonable opportunity of being heard to the person concerned. Requirement of hearing implies giving due consideration to the hearing, which can only be achieved by passing a reasoned and speaking order. Resultant order of the confiscating authority may, or may not necessarily in all cases lead to an order of confiscation.

21. The order of the District Magistrate, however, does not show any such consideration whatsoever. After noting the



petitioner's contention, the Collector has proceeded to record that he has heard the Special Public Prosecutor (Excise) and examined the documents available on the record. He has not even considered it appropriate to record the quantity of recovery from the vehicle, in question, as per the FIR (475 ML). He has proceeded on the erroneous assumption that two bottles of illicit liquor have been recovered from the petitioner's vehicle and that the same is admitted. This conclusion is without any factual basis

22. Such findings, to say the least, are perverse. He thereafter has proceeded to reproduce certain provisions of the Act, namely, Sections 13, 30, 56 and 58 of the Act and proceeds to record that he is authorized by appropriate notification for considering the confiscation applications and goes on to record the following conclusions:

"अतः बिहार मद्यनिषेध और उत्पाद अधिनियम 2016 की धारा-13, 30, 56 एवं 58 के आलोक में जब्त वाहन महिन्द्रा स्कॉपियो निबंधन सं०-BR06 PD-9548 को राज्यसात करने का पर्याप्त आधार पाते हुए जप्त वाहन को राजसात करने का आदेश दिया जाता है।"

English translation reads as follows:

"Hence, in the light of Section 13, 30, 56 and 58 of the Bihar Prohibition and Excise Act 2016, the seized



vehicle *Mahindra* bearing Registration No. BR06 PD-9548 is ordered to confiscate, finding sufficient grounds for confiscation"

23. The order of confiscation shows no consideration of the petitioner's case. It is also without assigning any reasons with reference to any material in support of the decision. Referring to the provisions of the Act, the authority has proceeded to order confiscation, as if no other view is possible under the provisions of the Act. The order, therefore, is clearly perverse on the face of the petitioner. That apart, it is also contrary to the procedural requirements contained in Sections 56 and 58 noted about.

24. It is settled law that while reviewing the decision of a *quasi-judicial* authority, as in the instant case, the Court confines itself to the correctness of the decision making process, and not the decision itself. Such law, however, is with inherent exceptions, such as, when the authority acts in abuse of power, in violation of the principle of natural justice, as also when the order is without jurisdiction. We would refer to the decision of the Hon'ble Apex Court in the case of *State of H.P. & Ors. v. Gujarat Ambuja Cement Ltd. & Anr.* in this regard. The same is reported in (2005) 6 SCC 499.



25. Another aspect of the matter is arising from order passed in *CWJC No. 593 of 2020* earlier filed by the petitioner wherein the Division Bench has observed as follows:

*“We further direct that all proceedings under Section 58 must positively be initiated/concluded within a period of ninety days from the date of appearance of the parties. Further, Appeal/Revision, if any, be also decided within a period of thirty days from the date of initiation, failing which the "things" (vehicle/property/etc.) shall be deemed to have been released in terms of several orders passed by this Court, reference whereof stands mentioned in **CWJC No. 2050 of 2020** titled as **Bunilal Sah @ Munilal Sah**.....*

.....We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to this Court.”

26. In the instant case, the petitioner has preferred appeal as well as revision. Before the Revisional Authority, the matter remained pending for at least three months, which is apparent



from bare perusal of the order of Revisional Authority. The same records the date of filing of the revision application as 15.04.2021. The order of the Revisional Authority, however, has been passed on 13.07.2021.

27. It is apparent that revision order is required to be passed within 30 days from the date of appearance of the affected party that also by a reasoned order. The time stipulated has apparently been breached by the Revisional Authority, as order has been passed about three months after the revision was filed before the Revisional Authority.

28. The petitioner, therefore, has taken a plea before the Revisional Authority that in terms of para 58 of the order passed in *CWJC No. 593 of 2020*, since the Revisional Authority has failed to decide the revision application in accordance with law within the time frame of thirty days, the petitioner's vehicle was required to be deemed as having been released.

29. The Revisional Authority, however, in contumacious disregard to this Court's order dated 08.07.2020 passed in *CWJC No. 593 of 2020*, has refused to acknowledge deemed release of the vehicle, and proceeded to affirm the confiscation. In doing so the authority has recorded an unsustainable ground of offices, functioning with limited manpower in view of



COVID-19 pandemic based restrictions. The plea is clearly untenable.

30. It is not the respondent’s case that government offices were closed. It is also not their case that, they have sought extension of the time limit specified by this Court in *CWJC No. 593 of 2020* earlier filed by the petitioner, directing for deemed release of the vehicle in case of non-adherence to the 30 days time fixed therein for deciding the revision.

31. This Court, however, instead of proceeding for contempt of Court against the Revisional Authority is directing the Collector (Respondent No.3) to release the petitioner's vehicle, subject to verification of his identity and ownership of the vehicle, in question, within two weeks from the date of receipt/ production of a copy of this order. The impugned orders would stand set-aside.

32. Writ application is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2023
Transmission Date	NA

