IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14992 of 2021

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Sandip Kumar Rai S/o Biva Nand Roy Resident of Village- Rannuchak, Police Station- Akbarnagar, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Banka.
2. The District Magistrate cum Collector, Banka.
3. The Excise Commissioner, Patna, Bihar.
4. The Superintendent Excise, Banka.
5. The Assistant Sub-Inspector Excise, Katoria, Banka.
6. Keshri Nandan Das S/o Late Mukteshwar Kumar Das Resident of Mohalla- Nehru Colony, P.S.- Banka, District- Banka.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Prasad Roy, 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 MR. JUSTICE MADHURESH PRASAD)

Date : 10-05-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner's vehicle (Wagon R) bearing registration No. BR-01EV-5108, was seized on 01.12.2020, in connection with Excise Case No. 98 of 2020, near *Bhaljor* check post during routine checking. There is alleged recovery of 750 ml of 'Bacardi Rum' and 500 ml 'Kingfisher strong bear', allegedly, total quantity of illicit liquor recovered is 1.250 litres.

3. The vehicle was subjected to confiscation proceedings in Confiscation (Excise) Case No. 625 of 2020-21, before the Collector Banka. The petitioner appeared in the confiscation proceeding before the Confiscating Authority. His case before the Confiscating Authority was that his brother had taken the vehicle for going to Deoghar. On the way back, he had an altercation with police at the check post, which led to his false implication on extraneous considerations.

4. The vehicle was confiscated on 25.01.2021, (Annexure- 3) to the writ petition. The Excise Commissioner vide order dated 14.04.2021, as contained in Annexure- 4 to the writ petition, passed in Excise Appeal Case No. 195 of 2021, filed by the petitioner, remanded the matter back to the Collector Banka for passing an order afresh after hearing the petitioner within a stipulated time frame (30 days).

5. During pendency of the appeal, the petitioner's vehicle was auction sold by the Collector Banka, under order dated 22.06.2021 (Annexure- 5). The purchaser of the vehicle has thus been impleaded as Respondent No. 6 in the present writ proceedings, and earlier notices were issued to him.

6. The Office has reported valid service of notice, which was received by his wife.

7. It is the case of the petitioner, that sale of the vehicle during appeal proceeding is *mala fide.* Learned counsel for the petitioner submits that the vehicle could not have been auction sold during pendency of the appeal. The petitioner claims to be an ex-Army personnel. It is his specific case that he had suffered a non fatal battle casualty, while performing operational duty in operation 'PARAKRAM'. In view of his injury, he has purchased the vehicle in-question, as otherwise his movement would have been very difficult.

8. Learned counsel for the State, on the other hand, submits that illicit liquor was recovered from the petitioner's vehicle. Such recovery rendered the vehicle liable to seizure and confiscation. After confiscation proceedings, vehicle vested in the Collector, who, has rightly auction sold the vehicle. After due instructions, he is not in a position to deny that the auction sale of the vehicle in-question took place at a time when the petitioner's appeal was pending before the Excise Commissioner.

9. The provisions of the Bihar Prohibition and Excise Act, 2016, (for brevity 'the Act') applicable at the relevant time with respect to confiscation and the Collector's power to auction the vehicle are provided in Sections 56, 57, 58, 61 and 92 of the Act.

10. Sections 56 and 61 relevant to the instant case is worth reproducing, the same read as follows:-

> [2]***[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 my 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.**]***

"***61. Confiscated articles to vest with the Collector****.-When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."*

11. The said provision is required to be considered along with Section 92 of the Act, which reads as follows:-

*"**92. Appeals.** (1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.*

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within ninety days from the date of the order complained of.

Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf."

12. The vehicle, thus vests with the Collector only when the order of confiscation becomes final.

13. In the instant case, the confiscation order was passed by the Collector, which is appealable to the Excise Commissioner within 90 days from the date of order under section 92(2). It is not in dispute that the petitioner has already filed his appeal and the same was pending.

14. In the circumstance, it cannot be said that the order of confiscation had attained finality, so as to conclude that the vehicle had vested with the Collector. In absence of the order attaining finality, on account of pendency of appeal under section 92, this Court is of the opinion that the Collector could not have proceeded to auction sale the vehicle in-question. The auction sale of the vehicle in-question, therefore, was not in exercise of any discretion vested in the Collector, since the confiscation order had not attained finality in terms of section 61 of the Act.

15. The auction sale, therefore, was not in *bona fide* exercise of jurisdiction by the Collector and this Court would consider exercise of such power to be a brazen colourable exercise of power by the Collector, rendering the auction sale of vehicle to be unsustainable in the eyes of law. ***(see para 36 of 2011(8) SCC 737)***.

16. The undue haste, with which the petitioner's vehicle in-question was auction sold by the Confiscating Authority without waiting for the decision of the Appellate Authority manifests lack of *bona fide* in exercise of jurisdiction by the Confiscating Authority. The auction sale of petitioner's vehicle in-question contrary to the Statutory provisions is also in violation of a time-honoured principle of law that where a Statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. ***(see para 40 of the Chief Information Commissioner & Anr. vs. State of Manipur & Anr. Reported in (2011) 15 SCC 1).***

17. In view of similar consideration, this Court, dealing with the subsequently amended provisions of the Bihar Prohibition and Excise Act, 2016 in ***C.W.J.C. No. 16274 of 2022***, quashed the order of auction sale and the order of confiscation.

18. We are informed by the learned counsel for the State that the vehicle in-question has been repossessed by the State Authorities.

19. In view thereof, we direct for the vehicle in-question to be returned to the petitioner. Since the petitioner's vehicle in-question has been in use of the auction purchaser since auction sale on 26.06.2021, we are of the view that the compensation of an amount of Rs. 50,000/- for the intervening wear and tear of the vehicle in-question would suffice.

20. We, therefore, quash the auction sale order dated 22.06.2021, as contained in Annexure- 5 to the writ petition. Insofar as the petitioner's vehicle is concerned, the vehicle and the amount of Rs. 50,000/- should be handed over to the petitioner within four (4) weeks from the date of receipt/production of a copy of this order.

21. The instant order deals with auction sale of the vehicle, confiscated under the Act with undue haste and in a manner contrary to the Statutory procedure, which lacks *bona fide*.

22. We are, therefore, of the opinion that the copy of this order be communicated to the Chief Secretary, Government of Bihar to take appropriate measures for issuing necessary orders/guidelines to the Confiscating Authorities to ensure that there is no recurrence of similar auction sale of vehicle in future.

23. We also allow liberty to the State to recover compensation amount of Rs. 50,000/- from the erring official, including the Collector, Banka, after notice and proceedings in accordance with law.

24. Accordingly, the writ petition is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Raj kishore/-

AFR/~~NAFR~~	AFR
CAV DATE	N/A
Uploading Date	20.05.2023.
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