IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16252 of 2021

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Chandan Kumar, Son of Kumar Arun Singh, Resident of Village- Dilawarpur, Gowardhan, P.S.- Bidupur, District- Vaishali.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition Registration Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate, Vaishali at Hajipur.
5. The Superintendent of Police, Vaishali at Hajipur.
6. The Officer In-charge of Hajipur Town P.S., District Vaishali.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Vijaya Laxmi Srivastwa, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC11)

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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 : 27-09-2023

In the instant writ petition, petitioner has prayed for the following relief(s);-

> *"(i) For issuance of an appropriate writ in the nature of certiorari quashing the order dated 10.08.2021 passed in Excise Revision No. 67/2021 passed by Additional Chief Secretary, Prohibition and Excise Department, Govt. Of Bihar, Patna whereby and whereunder the learned court has rejected the revision of the petitioner without considering the facts and circumstances of the case which is illegal, arbitrary and not sustainable in the eye of law.*
> *ii. For issuance of writ in the nature of certiorari for quashing the order dated 01.06.21 passed by*

the Learned Excise Commissioner in Excise Appeal Case No. 340/2021.

iii. For issuance of writ in the nature of certiorari for quashing the order dated 05.10.20 passed by Additional District Collector, confiscation case no. Vaishali in 171/20-2021 by which additional District Magistrate, Vaishali has been pleased to confiscate the vehicle (Swift Dezire) - JH 1 DB-8323 and release the said vehicle in favour of the petitioner.

iv. To pass interim ex party ad interim relief during the pendency of the present writ application stay the operation of the order dated 05.10.2020 passed by the Additional District Magistrate, Vaishali Confiscation Case No.- 171/20-21.

v. For issuance of an appropriate writ in the nature of mandamus for directing the respondent to release car bearing Registration No. JH-01DB-8323 in favour of petitioner which was seized in connection with Vaishali Town P.S. Case No.- 553/2019 registered under section 30 (a)/32 (2) of Bihar Prohibition and Excise Amendment Act, 2016.

vi. For issuance of any other relief or reliefs for which the petitioner is found entitled in the fact and circumstances of the case."

2. Subject matter of motor vehicle (Swift Dezire Car) bearing Registration No. JH-01DB-8323 was seized along with one litre of beer on 20.06.2019 and FIR was registered as Hajipur PS Case No. 553 of 2019 under Clause (a) of Section 30 and Section 32 of the Bihar Prohibition and Excise Act, 2016.

3. Arising out of the above incident, confiscation proceedings was required to be initiated and completed within a reasonable period of three months in terms of Section 58 of the

Bihar Prohibition and Excise Act, 2016 (for short ‘the Act, 2016) read with the subsequent Bihar Prohibition and Excise Rules, 2021.

4. Perusal of the record, it is evident that concerned seizing authorities were required to send a report without any undue delay as is narrated under Section 58 of the Act, 2016. On the other hand, in the present case seizing authority sent report to the jurisdictional Collector on 26.06.2020. Confiscating Authority proceeded to pass order against the petitioner on 05.10.2020 and it has been communicated to the petitioner on 09.12.2020. Thereafter, petitioner has preferred an appeal and it was rejected on 01.06.2021. Further the subject matter of motor vehicle was auctioned on 27.08.2021.

5. Learned counsel for the petitioner submitted that there is a delay in sending the report by the seizing authority to the Collector as is evident from the date of FIR and communication of report dated 26.06.2020. Such forwarding papers to the collector is contrary to object of Section 58 of the Act. It is also submitted that for mere seizure of one litre of beer, seizure of motor vehicle worth about Rs. 5,00,000/- has been auctioned is too harsh and unreasonable. In absence of any yardstick and guideline issued by the State Government, respective Collectors

are passing confiscation orders arbitrarily without examining the nature of seized liquor and its quantity. It is further submitted that confiscating authority and appellate autority have not applied their mind insofar as quantum of seizure/confiscating the motor vehicle worth about Rs.5,00,000/-.

6. *Per-contra,* learned counsel for the respondents resisted the aforesaid contention and submitted that no doubt there is delay in sending the report by one year but there was outbreak of COVID-19, therefore, there is a delay. It is further submitted that irrespective of quantum of seizure of liquor, there is no specific provision under the Act, 2016 commensurate with the seizure of the liquor read with the confiscation of movable or immovable property, therefore, there is no infirmity in the orders of the confiscating autority dated 05.10.2020 read with the appellate's authority order dated 01.06.2021 and auctioning the subject matter of motor vehicle on 27.08.2021.

7. Heard the learned counsels for the respective parties.

8. Undisputed facts are that petitioner and his motor vehicle cited (supra) are involved in the offences under the Bihar Prohibition and Excise Act. FIR was registered on 20.06.2019. Section 58 of the Bihar Prohibition and Excise Act, 2016 reads 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 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."*

9. Reading of Section 58 of the Act, 2016, it is crystal clear that seizing of liquor/motor vehicle/premises was required to be informed to the jurisdictional collector without any undue delay. On the other hand, in the present case FIR was registered on 20.06.2019 and report was sent on 26.06.2020. The learned counsel for the State submitted that due to Covid-19, there is a delay. Such a contention is not appreciable for the reasons that FIR is dated 20.06.2019 whereas, the Covid-19 restrictions came into force in March, 2020. Therefore, submission of the State counsel could not assist in overcoming the delay issue. Further, we have noticed that there is no application of mind by both the confiscating authority and appellate authority insofar as examining the issue of delay in submission of report by the seizing authority, quantum of beer to the extent of one litre and penalty of seizure of motor vehicle worth about Rs. 5,00,000/- would be too harsh.

10. Taking note of these facts and circumstances and in identical circumstances, recently we have passed a detailed order dated 14.09.2023 in CWJC No.17894/2022 (***Sunita Sinha vs. The State of Bihar and Ors.)*** deprecating the tendency of

the authorities to confiscate the premises found involved in trade of illicit liquor in an arbitary manner and putting unreasonable terms and conditions for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises. Apparently, the case of the petitioner is covered under the aforesaid decision.

11. In the aforesaid facts and circumstances, the order of confiscating authority dated 05.10.2020, appellate authority's order dated 01.06.2021 and the revisional authority's order dated 10.08.2021 are set aside. The concerned authority is hereby directed to pay the auctioned amount to the petitioner within a period of three months from the date of receipt of a copy of this order.

12. Accordingly, the instant writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2023
Transmission Date	NA