IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14069 of 2023

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Vinita Singh W/o Ravi Shankar Singh R/o New Area Bishar Tank, Nutan Nagar, Gaya PS, Gaya, Bihar-823001.

... ... Petitioner.

Versus

1. Chief Secretary, Govt. of Bihar, Patna.
2. Secretary-Cum-Excise Commissioner, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. District Magistrate-Cum-Collector, Gaya.
4. Deputy Collector Land Reforms, Nimchak Bathani, Khijarsarai, Gaya.
5. Senior Superintendent of Police, Gaya.
6. Assistant Commissioner of Prohibition, Gaya.
7. SHO, Civil Lines PS, Gaya.

... ... Respondents.

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Appearance :

For the Petitioner	:	Mr. Kumar Amit, Advocate.
For the State	:	Mr. Vivek Prasad, G.P.7.
		Ms. Manisha Singh, A.C. to G.P.7.
		Mr. Sanjay Kumar, A.C. to G.P.7.
		Ms. Roona, A.C. to G.P.7.
		Ms. Supragya, A.C. to G.P.7.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-11-2023

In the instant writ petition, the petitioner has prayed for the following reliefs:

(a) To issue an appropriate writ in the nature of certiorari for quashing the order dated 21.08.2023 passed by Respondent No.2 in Excise Appeal case no.118 of 2023 whereby and whereunder the

Confiscation order dated 06.06.2023 passed by the Ld Deputy Collector Land Reform, Nimchak Bathani, Khijarsarai, Gaya in Excise Confiscation Case No.41/2023 along with the imposition of penalty of Rupees 5 lacs and surcharge of Rupees 15,000 communicated by Assistant Commissioner of Prohibition, Gaya as way of penalty in Form iv of Bihar Prohibition (Amendment) Rules, 2023 sub-rule 2 of Rule 12A for release of the seized Vehicle (Bus) bearing Registration no.BR02PA-7551 has been affirmed.

(b) To issue an appropriate writ in the nature of mandamus commanding the Respondents to restore/return the amount of Rs. 5 lacs imposed and collected as penalty as well as additional Rupees 15,000 collected as surcharge as 3% of the imposed penalty as the Petitioner is entitled for.

(c) Pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The petitioner's motor vehicle bearing Registration No.BR02PA-7551 was alleged to have been involved in the Excise Offence, in the result case was registered on 08.03.2023. The Superintendent of Police, Gaya, is stated to have forwarded the report on 08.05.2023 to the District Collector, Gaya. Faced with these materials read with the petitioner's application under Rule 12A of Bihar Prohibition and Excise Rules, 2021 read with (Amendment Rules, 2023), proceeded to demanded or imposed penalty of a sum of Rs.5,00,000/- for the purpose of release of the subject matter of the motor vehicle.

3. The petitioner feeling aggrieved by the Annexure-P3 dated 06.06.2023 and communication dated 15.06.2023 (Annexure-P-4), presented this petition.

4. It is submitted that petitioner has paid a sum of Rs.5,00,000/- and Rs.15,000/- in order to get released the subject matter of the motor vehicle and it is stated to have been released.

5. Learned counsel for the petitioner submitted that the impugned actions are not in accordance with the sub-rule (2) of Rule 12A (Amended Rules, 2023) notified on 31st May, 2023. In other words, it is submitted that there is no determination of Rs.5,00,000/- and petitioner has not been provided an opportunity of hearing before determination of a sum of Rs.5,00,000/- as a penalty. Therefore, the impugned actions of the respondents are liable to be set aside.

6. Per contra, the respondents have taken a decision insofar as collecting penalty of sum of Rs.5,00,000/- and it is reflected in the file. To that affect, a statement has been made in the counter affidavit at paragraph-7. It is further submitted that there is no infirmity in the impugned orders dated 06.06.2023 and 15.06.2023 (Annexures-P3 and P-4 respectively).

7. Heard the learned counsel for the respective parties.

8. It is not disputed that the petitioner's subject matter of the motor vehicle was alleged to have been involved in the offences under the Excise Act on 08.03.2023 and motor vehicle was seized. In respect of release of the subject matter of the motor vehicle, the petitioner is stated to have filed application under Rule 12A of Bihar Prohibition and Excise Rules, 2021 read with Amended Rules, 2023. It is necessary to take note of Rule 12A of the Bihar Prohibition and Excise Rules, 2021 and amended sub-rule (2) of Rule 12A of the Bihar Prohibition and Excise Rules, 2023, which are as under:

> **Rule 12A of the Bihar Prohibition and Excise Rules, 2021:**
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> "**12A. Release of Vehicles, Conveyance etc. on payment of Penalty.-** (1) if any vehicles,

conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of Section 57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The penalty shall be 50% of the latest insured value of vehicle/conveyance. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer and 50% of that value shall be the amount of penalty.

In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/ auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall , after the release of the vehicle/conveyance, produce the vehicle/conveyance as and when required by the authorities."

Amended sub-rule (2) of Rule 12A of the Bihar Prohibition and Excise Rules, 2023,

"(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and

> the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs.5 lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the Officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer.
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> In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction."
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> underline supplied.

9. Reading of the aforementioned statutory provisions, it is evident that the concerned authorities before determining penalty at Rs.5,00,000/-, the petitioner has not been heard. That apart, there is no mode of determination of a sum of Rs.5,00,000/-. On the other hand, amended sub-rule (2) of Rule 12-A **cited supra**, the maximum penalty would be Rs.5,00,000/-. In order to determine penalty of Rs.5,00,000/-, there are no reasons. Further petitioner has not been given an opportunity before imposing penalty of Rs.5,00,000/-. In view of these facts and circumstances, the petitioner has made out a case. Accordingly, Annexures-P3 and P-4 are set aside. The concerned authorities are hereby directed to revisit to the petitioner's application filed under Rule 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules, 2023 insofar as sub-rule (2) of Rule 12A of Rules 2021. The concerned authority is hereby directed to determine tentative penalty along with reasons and give a proposal to the petitioner and seeking his explanation. On receipt of petitioner's explanation, proceed to pass a detailed speaking order insofar as determining penalty amount. If there is any change in the penalty of Rs.5,00,000/- in that event the same shall be indicated in the speaking order. If the penalty is reduced from Rs.5,00,000/- with reference to factual aspect of the matter like quantum/quality of the seized liquor and other circumstances warranting for imposition of penalty be taken note of. If the fresh order of penalty is less than Rs.5,00,000/- in that event the difference of amount shall be paid to the petitioner. If the authorities determine a sum of Rs.5,00,000/- as a penalty in that event the same shall be communicated to the petitioner so as to enable him to resort appropriate remedy. The above exercise shall be undertaken within 3 months from today.

10. With the above observations, impugned orders dated 21.08.2023 and 06.06.2023 are set aside.

11. C.W.J.C. No.14069 of 2023 stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2023.
Transmission Date	NA