IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17894 of 2022

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Sunita Sinha wife of Sudhir Prasad Sinha, Resident of Mohalla-D-15, Sector 8, Koyala Nagar, P.O.-BCCL Township, P.S.-Saraidhela, District-Dhanbad (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The Excise Commissioner, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. The Superintendent of Police, Patna.
6. The Officer in Charge, Ram Krishna Nagar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Krishna Chandra, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 14-09-2023

Learned counsels for the respective parties have been heard on the last date of hearing.

2. The petitioner has filed the instant writ petition seeking the following reliefs :-

> *"(i) For issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Certiorari, for quashing the order*

dated 02.09.2022 passed by Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar (Res. No.-2) in Excise Revision No.-194/2022 in connection with Excise Appeal Case No. 362/2022 (arising out of Excise Confiscation Case No. 3138/2022), to the extent, whereby and whereunder while allowing the premises in question owned by petitioner to be released (as the same was confiscated in connection with Excise Case being Ramkrishna Nagar P.S. Case No.-259/2020) in her favor, has directed to make payment of Rs. 10,00,000/-(Rs. Ten Lakh Only), which is very exorbitant and unreasonable.

ii. The petitioner further prays for issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Certiorari, quashing the order dated 27/06/2022 passed by Excise Commissioner (Res. No.-3), in Excise Appeal Case No.-362/2022, whereby and where under appeal preferred by the petitioner was rejected and order of confiscation dated 16.03.2022 passed by the Collector in Excise Confiscation Case No. 3138/2022 was confirmed.

iii. The petitioner further prays for issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Certiorari, quashing the order dated 16.03.2022 passed by the Collector in Excise Confiscation Case No.-3138/2022 whereby and whereunder the premises in question owned by petitioner was ordered to be confiscated in connection with Ramkrishna Nagar

P.S. Case No.-259/2020) as being owner of the property and it was her responsibility to ensure that her premises is not being used for any unauthorized business.

iv. The petitioner further prays for issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Mandamus directing the Respondents to release the Godown having been constructed upon the land appertaining to Khata No.-41, Plot-379, Mauza-Jakriyapur, Thana- Patna City under the Ram Krishna Nagar Police Station, Patna in favour of the Petitioner, which was confiscated by Respondents in connection with Ram Krishna Nagar P.S. Case No.-259/2020 dated 03.09.2020 registered under section 30(a) of Bihar Prohibition & Excise (Amendment) Act, 2018, as the petitioner is a lawful owner of the Godown and had leased out the said premises, pursuant to an agreement dated 29.07.2020.

V. For any other relief/reliefs, which the Hon'ble court may grant in general interest, that may be deemed appropriate and necessary in this case.

3. Briefly stated, the case of the petitioner is as follows:

The petitioner is resident of Dhanbad, who has been staying with her husband, who was Deputy General Manager (Excav), Bharat Coking Coal Limited, Dhanbad and retired on 31.03.2022. The petitioner is the owner of a godown situated on an area of 1 Katha 10 Dhur bearing Khata No. 41, Plot No.379, Mauza-Jakriyapur, Thana-Patna City situated under Ram Krishna Nagar Police Station which she let out on lease in the year 2016 to one M/s Saarthak Vanijya India Limited and the deed of lease was executed on 19.05.2016. Thereafter, in the year 2020, the aforesaid premises was given on rent to one Akash Kumar for 11 months and the deed of rent was executed on 29.07.2020 and the tenant had been using the godown since the date of agreement of the parties.

4. Further case of the petitioner is that she was very cautious about the use of premises given on rent and clear stipulation has been made in the agreement that the tenant would not do any illegal work in the godown and would follow the laws and regulations of the government and in case of any failure, the tenant was to be solely liable for the consequences. The said Aakash Kumar paid rent for only one month and thereafter failed to make payment of monthly rent for subsequent months and effort of the petitioner to contact the said person were futile. Thereafter, the petitioner came to know that her godown had been sealed by the police following registration of a case under Bihar Prohibition and Excise Act since the recovery of foreign liquor was made from her

godown. On further inquiry, the petitioner came to know about registration of Ram Krishna Nagar P.S. Case No.259/2020 under Section 30 (a) of Bihar Prohibition & Excise (Amendment) Act, 2018 on 03.09.2020 against herself, her tenant Aakash Kumar and five other co-accused persons. The said FIR was registered on the written report of the SHO of Ram Krishna Nagar Police Station who stated about receiving of some information in course of special drive that illicit liquor was being unloaded from a truck bearing registration no.UK08CA-9529. A raid was conducted on 03.09.2020 and the co-accused Suraj Pandey was apprehended, who disclosed that the petitioner is the owner of the godown in Jakriyapur Loha Gali which she used to manage through one Indrajeet Kumar and the apprehended co-accused further named the tenant Aakash Kumar and other co-accused persons who used to store illicit liquor in the said godown of the petitioner. Further raid was conducted on the godown and total 543.51 liters of India made foreign liquor was recovered from the said godown.

5. After registration of Ram Krishna Nagar P.S. Case No. 259/2020, the godown of the petitioner was sealed. Thereafter, the petitioner made an application before the concerned authority for release of her godown on 20.03.2021,

but no avail. As there was no response to the application of the petitioner, she preferred CWJC No.19581 of 2021 before this Court and her petition was disposed of vide order dated 23.12.2021 with a direction to the petitioner to appear before the competent authority on 21.01.2022. In the light of the observations/directions, the petitioner appeared before the concerned authority on 21.01.2022 and filed an application for release of the godown on the ground that the premises was on rent and the petitioner was having no knowledge of storage of India made foreign liquor in her godown at the behest of her tenant. Thereupon, she came to know that Confiscation Case No.3138/2021-22 was registered in view of the letter dated 22.10.2021 issued by the Superintendent of Police, EOU whereby it was proposed to confiscate the premises in question in connection with Ramkrishna Nagar P.S. Case No.259/2020.

6. Further case of the petitioner is that the Confiscation Case No.3138/2021-22 was disposed of by an order dated 16.03.2022 passed by the Collector-cum-District Magistrate, Patna without appreciating the facts and circumstances of the case and merely on the ground that the petitioner being the owner of the rented property it was her responsibility to ensure that no illegal business was being

carried out in her godown. The authority did not appreciate the fact that the petitioner, being a lady, has been residing at Dhanbad (Jharkhand), had taken abundant precaution while entering into the agreement for rent while imposing various conditions. Being aggrieved with the aforesaid order of confiscation, the petitioner preferred an appeal bearing Excise Appeal Case No.362 of 2022 before the Excise Commissioner, but the appeal preferred by the petitioner was rejected vide order dated 27.06.2022 without interfering in the order of the Collector-cum-District Magistrate. While rejecting the appeal, the appellate authority, though it took notice of the fact that the premises in question was on rent and the petitioner had no knowledge of the offence, but it passed the orders solely on the ground that the premises was used for storage of India made foreign liquor. Thereafter, the petitioner preferred Excise Revision Case No.194/2022 before the Additional Chief Secretary, Prohibition, Excise and Registration Department, Patna. The revisional authority appreciated the facts partially by observing that the whole matter was under investigation and the process of trial would see the finality as and when the trial was completed and whether the revisionists of the said premises had knowledge of the said liquor or not, was a subject matter to be decided in the course of trial. However, the revisional authority allowed the premises in question owned by the petitioner to be released upon payment of Rs.10,00,000/-only vide its order dated 02.09.2022.

7. Aggrieved by the aforesaid three orders, the petitioner has come before this Court in assailing the three orders with further prayer to direct the respondents to release her godown.

8. The learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the FIR, it is evident that the name of the petitioner transpired in the present case only for the reason that she is the owner of the subject property from where the alleged recovery has been made. The premises in question was given on rent is not in dispute. This fact has been appreciated by the appellate as well as revisional authorities. There is not even iota of evidence which could suggest that the petitioner was facilitating the culprits or providing access for storage of incriminating articles. Either directly or indirectly, she has not contravened Section 30 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Act’) and for this reason her premises is not liable to be confiscated under Section 56 of the Act. The learned counsel

further submitted that the petitioner had been staying at Dhanbad and the premises/godown is at Patna, Bihar and was given on rent much prior to the alleged incident and for this reason, no case would be made out against the petitioner as she was not in possession of any incriminating article in contravention of any provisions of the Act and neither she was having any knowledge of running of illegal business by the tenant Aakash Kumar. When the petitioner has been able to satisfy the authorities, though to certain extent, that the premises in question was let out on rent and nothing came on record suggesting the knowledge of the petitioner about the storage of illicit liquor in the premises in question. Imposition of the condition of release of the premises of the petitioner on payment of Rs.10 lacs is arbitrary, unreasonable and illegal. The learned counsel further submitted that the petitioner is named in the FIR and therefore, she will have to face the trauma of criminal trial without any fault of her own and forcing her to pay an amount of Rs. 10 lacs for release of her own premises in anticipation of outcome of criminal trial which might conclude in either way is not based on a prudent reasoning. The learned counsel further submitted that the impugned orders of the confiscating authority, appellate authority and the revisional authority have been passed in complete non-application of mind in the absence of any material information against her. The aforesaid authorities did not take into consideration the rights of the petitioner under Article 19 (1) (g) and Article 300 (A) of the Constitution of India whereunder the petitioner has a right to owned the property and she has further got right to carry on any occupation, trade or business. The action of the authorities is arbitrary, unreasonable and shows complete non-application of mind when the fact was crystal clear that the premises owned by the petitioner was undisputedly being used by the tenant under a valid deed of agreement. Further, the imposition of a condition to pay Rs.10 lacs for release the premises is unreasonable and impracticable to comply. Thus, the learned counsel submitted that the instant writ petition may be allowed and the relief sought by the petitioner may be granted to her.

9. *Per contra*, the learned counsel for the respondents submitted that there is no infirmity in the impugned orders of the respondent authorities. The petitioner is named in the FIR and recovery of illicit India made foreign liquor was made from the premises owned by the petitioner. Section 56 of the Act makes it amply clear that whenever an offence punishable under this Act is committed, the Collector or an officer authorized by

him may confiscate such items based on the report of the investigating officer and such items may include any premsies or part thereof. Since the recovery of illicit liquor has been made from the premises in question, it is immaterial whether the said premises was on rent and the offence becomes place specific. The learned counsel further submitted that Section 57 (B) of the Act read with Rule 12 (B) of Bihar Prohibition and Excise Rules, 2021 provides for release and unsealing of premises or part thereof upon payment of such penalty as ordered by the authorities. Hence, even the order passed for release on payment of penalty of Rs.10 lacs is a valid and legal order and cannot be said to be unreasonable or arbitrary. Thus, the learned counsel submitted that there is no merit in the instant writ petition and the same be dismissed.

10. Perused the record.

11. Before adverting to the case, certain provisions of law need to be considered.

Section 30 of the Act provides as under :

> *"**30. Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.** - Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or*

without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder –

> *(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or*
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> *(b) Constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or*
>
> *(c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or*
>
> *(d) Manufactures any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or*
>
> *(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or*
>
> *(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated;*

shall be punishable with imprisonment for the term which may extend to life and with fine which may *extend to ten lakh rupees.*

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees".

12. *Prima facie,* it appears from the perusal of the FIR that though the premises owned by the petitioner may be involved in storage of illicit liquor, apparently involvement of the petitioner is not so forthcoming from the facts and circumstances of the case. Evidently, the petitioner, a lady, is a resident of Dhanbad (Jharkhand) where she has been residing during the relevant time with her husband, a retired Deputy General Manager (Excav), Bharat Coking Coal Limited, Dhanbad. Thereafter, production of lease/rent deeds from the year 2016 to 2020 clearly reveal letting out of the premises. Moreover, the petitioner has been arraigned as an accused and she will have to face rigours of trial and final decision of her innocence is to be taken by the learned trial court. For the aforesaid reasons, the petitioner cannot be declared guilty even before the conclusion of trial and it goes against the established canons of law that a person is presumed to be innocent till proven guilty.

13. Further Sections 56, 57 B and 58 of the Act provide as under :

> *“**56**. Confiscation of Seized Items.- (1) Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an Officer authorized by him may confiscate such items based on the report of the investigating officer.*
>
> *(2) Such items may include-*
>
> *(i) any premises or part thereof;*
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> *(ii) any animal, vehicle, vessel or conveyance;*
>
> *(iii) any liquor or intoxicant;*
>
> *(iv) any other item having bearing with the case;*
>
> *Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.*
>
> *(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.*
>
> ***57B.** Things or premises liable to be released upon penalty.- (1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*
>
> *2. Any premises or part thereof used for*

committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per Section-58.

***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 subsection (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".

14. Rule 12 B, 13 B and 14 of the Bihar Prohibition and Excise Rules, 2021 which came into effect on 27.09.2021, read as under :

*"**12B. Release of Premises on Payment of Penalty:** - (1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or*

unseal the said premises or part thereof 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 premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) 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, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case.

In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing 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 premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of

the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.

13B. Procedure of confiscation of Premises: - *(1) Where it is decided by the Collector that the premises is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the premises shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure/sealing. The officer concerned shall immediately start the confiscation proceeding.*

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal of confiscation of any premises or part thereof or any property liable for confiscation from police/excise officer, shall issue show cause notice to the owner(s) of the premises or property. Simultaneously, he shall issue notice to the Chemical Examiner and/or such revenue officers for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.

(4) The officer shall provide reasonable

opportunity of hearing to the owner(s) of the premises or property. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If the person to whom notice has validly been served fails to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

(6) The officer shall, after hearing the parties, pass appropriate order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property on the basis of his satisfaction whether an offence has been committed or not in terms of the Act.

(7) The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure/sealing of the premises.

(8) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules.

14. Auction or Destruction of Seized/Confiscated items: *-The items seized/confiscated by the Collector or any officer authorized by him may be disposed of by him, either by auction or by destruction, in the following manner: -*

(1) If the Collector or the officer authorized by him, is satisfied that any seized article, is liable to speedy and natural decay or is of trifling value or can be put to misuse or

endangering public safety or occupying public space, he may, in exercise or power under Section-57 and Section-57A of the Act, order for destruction of the same at any time before passing the order of confiscation. The Collector or the officer concerned shall ensure that any seized liquor should not be allowed to remain stored for a very long time. He shall ensure that the said liquor is destroyed within 15 days of its seizure after having obtained the report of the chemist.

(2) The confiscated animal/ vehicle/ vessel/ other conveyance premises or part thereof shall be put to public auction and sold to the highest bidder within a period of one month from the date of attainment of finality of order of the confiscating authority or such extended period as deemed fit by the Collector/authorized officer or may be put government use in the manner prescribed.

(3) Before the auction, the Collector or the officer may cause the valuation of the vehicle/conveyance/premises. He shall then invite bid through public advertisement in at least one local/vernacular newspaper. Where he does not receive any offer for a particular item in the first attempt of auction, he may invite bids again. If, after three such attempts, he does not receive any bid, he may dispose of the said vehicle/conveyance on an "as is where is" basis regardless of the valuation".

15. From bare reading of the aforesaid provisions, it

seems that whenever offence punishable under this Act has been committed, any premises or part thereof used for committing any offence might be seized/confiscated and released upon penalty. It leaves no doubt that a premises can be seized and even confiscated and auctioned merely upon its involvement in any offence under the Act. This is indeed a draconian provision and so it must be used with complete circumspection. The existing provisions of the Act gives unfettered and unguided and arbitrary powers to the authorities. In the absence of any specific guidelines, such powers can be abused or misused and such powers can be exercised arbitrarily insofar as alleged proven charge and commensurate penalty could be seen in the better legislation- like provisions of Criminal Procedure Code read with Indian Penal Code, where the sentence/conviction is proportionate to prove charges.

16. We have noted some disturbing trends with regard to the aforesaid provisions. Though the Act talks about necessary directions, guidelines, regulations, instructions to be issued by the State Government with respect to mode and manner of search and seizure, destruction and confiscation, we have provisions only under Section 57 B of the Act and Rules 12 B, 13 B and 14 of the Bihar Prohibition and Excise Rules,

2021 to meet such situations. These provisions are clearly insufficient and authorized officers are very likely to misuse the provisions and the decisions are taken arbitrarily. For example, in the present case, for release of subject premises, a sum of Rs. 10 lakhs is imposed. There is no yardstick as to how the authority came to the conclusion for imposing penalty of Rs. 10 lakhs for release of premises.

17. Coming back to the provisions of the Act, there is no subjective assessment under Section 56 of the Act regarding involvement of the premises and the hardship which will be faced by the persons apparently without any fault of their own. Let us take certain examples to make issue clear. As in the present case, the premises was given on rent and apart from the tenant/lessee, the owner has been made accused and she has been further directed to make payment of Rs.10 lakh towards the penalty amount for release of the premises. We can take another example of the joint family owned premises. Suppose a person of the joint family keeps a bottle of liquor in the premises without knowledge to other inmates, will that premises be seized and sealed and confiscation proceeding will be started ousting all the inmates of joint family property simply on the ground that the law provides so? Third example could be taken

of a government quarter. If any recovery is made from a government quarter, will the State come forward and seize/seal/confiscate and auction the property? Then another issue which is to be considered is that there is no subjective relationship between the quantity of liquor seized and the premises sealed or the penalty imposed as we could decipher from the aforesaid provisions. Even the Rules, though provide for taking into consideration economic status of the individual, nature of his involvement in the crime, location of the premises and quantum of intoxicant recovered while deciding the quantum of the tine, yet the Rules also provide that the fine shall not be less than Rs. one lakh. This is simply absurd as to whether there is recovery of 100 ml. of intoxicant or 1,00,000 liters, minimum fine shall be Rs. one lakh. The provisions of law discussed here-in-before even give complete discretion to the confiscating authorities with regard to imposition of penalty since no guidelines have been provided. This may create anomalous situation as the jurisdictional authority in one area, in similar circumstances, may impose a lesser penalty, whereas for the same act, the jurisdictional authority in another area may impose higher penalty.

18. Enactment of law and rules in such manner may

make such laws and rules arbitrary and the same goes against the spirit of Article 19 (6) of the Constitution which provides as under :

> *"19(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—*
>
> *(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*
>
> *(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".*

19. Further, the Hon'ble Apex Court in the case of ***Romesh Thappar v. State of Madras***, reported in ***1950 SCC 436***, considered the possibility of law concerned being applied in unconstitutional manner and held such law be declared void.

20. Further, the Hon'ble Apex Court in the case of ***E.P. Royappa vs. State of Tamil Nadu and another***, reported in ***AIR 1974 SC 555*** held in paragraph 85 as under :

> *"85. ...Articles 14 and 16 strike at arbitrariness in State action an ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16. It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is, therefore, no answer to the*

charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Art. 311 but not to Articles 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of Deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for colaterial reasons? These are the questions which call for our consideration".

21. Though, these observations have been made in different context, yet the underlying principle remain the same. There cannot be any arbitrariness in the matter of state policy and principles.

22. Further, the Hon'ble Supreme Court held in the case of ***Menka Gandhi Vs. Union of India, (1978) 1 SCC 248,*** that every law has to be just, fair and reasonable; otherwise it will be considered unconstitutional.

23. Thus, the provisions of law as framed under the Act does not appear to be perfect law and suffers from a number of infirmities. However, since the provisions of Act or the Rules framed therein are not in challenge, we refrain ourself from making any further comments on the provisions under the Act.

24. Coming back to the facts of the present case, undisputedly the premises in question was let out on rent. The authorities failed to take into consideration this fact and in a mechanical manner passed the impugned orders. The petitioner could not be made to suffer for being the landlord/owner of the premises in question if recovery of some liquor has been made. We are of the view that all the three authorities namely, the confiscating authority, the appellate authority and the revisional authority committed error and failed to discharge the duty cast upon them while passing the impugned orders in the absence of any direct or indirect evidence against the petitioner.

25. Accordingly, the order of confiscating authority dated 16.03.2022, the order of appellate authority dated 27.06.2022 and the order of the revisional authority dated 02.09.2022 are set aside. The respondent authorities are directed to release the godown in favour of the petitioner henceforth.

26. The writ petition is allowed with a cost of

Rs.50,000/-. The cost shall be paid to the petitioner by the official respondents for the reason that it is a case of no evidence except the fact that the petitioner is owner of the premises and the allegations are that the tenant Aakash Kumar used the rented premises for alleged illegal activities.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	29.08.2023
Uploading Date	14.09.2023
Transmission Date	N/A