IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5115 of 2023

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Jhimilal Ray S/o Nirval Dhari Ray, resident of Village Rikabganj P.S. Malsalami Patna City, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Commissioner, Excise Department, Govt. of Bihar, Patna.
4. The District Magistrate, Begusarai.
5. The D.C.L.R. Baliya District Begusarai.
6. The Officer in Charge Police Station S. Kamal, District Begusarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Satyendra Kumar Srivastava, Adv.

For the Respondent/s : Mr.Vikash Kumar (SC 11)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 30-09-2024

This writ petition has been filed by the petitioner against the order dated 01.12.2022 passed by the revisional authority i.e. Additional Chief Secretary, Excise Department, Govt. of Bihar, Patna (respondent no. 2) in Excise Revision No. 226 of 2022 affirming the order dated 25.10.2021 passed by the appellate authority i.e. Commissioner, Excise Department, Govt. of Bihar, Patna (respondent no. 3) in Excise Appeal No.

700 of 2021 and the order of confiscation dated 27.03.2021 passed by Deputy Collector, Land Reforms, Baliya, Begusarai (respondent no. 5) in Confiscation (Excise) Case No. 8/2021, 125/2020.

By filing the present writ petition, the petitioner has prayed for the following reliefs :-

> *"i) For issuance of an appropriate writ in the nature of certiorari for setting aside the order dated 01.12.2022 passed in Excise Revision No. 226 of 2022 by respondent Additional Chief Secretary, whereby and whereunder respondent Additional Chief Secretary has been pleased to dismiss the revision application filed by the petitioner;*
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> *ii) For setting aside the order dated 25.10.2021 passed in Excise Appeal No. 700 of 2021 passed by the respondent Commissioner Excise Departmnet, Govt. of Bihar, whereby and whereunder respondent Commissioner has been pleased to dismiss the appeal filed by appellant/petitioner vide order dated 25.10.2021;*
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> *iii) Further for setting aside the order dtaed 27.03.2021 passed in*

Confiscation (Excise) Case No. 8/2021/125/2020, whereby and whereunder respondent D.C.L.R. has been pleased to confiscate the Bolero Pick-up Van bearing Registration No. BR-01-GD-9104 of the petitioner which has been seized in S.Kamal P.S. Case No. 181 of 2018 for the alleged offences under section 30(a), 32(3), 34(3), 36, 38(2), 41(1) of the Bihar Prohibition and Excise Act, 2016;

iv) Further for issuance of any other writ/ writs, order/ orders, direction/ directions for which petitioner shall be found entitled under the facts and circumstances of the case in principle of equitable justice.

2. Briefly stated, the facts of the case is that there is alleged recovery of 552.06 liters of illicit country made liquor from the vehicle (Bolero Pick-up van) of the petitioner bearing Registration No. BR-01-GD-9104. On the basis of aforesaid fact, F.I.R. No. 181 of 2018 dated 17.06.2018 was registered in S. Kamal P.S. under sections 30(a), 32(3), 34(3), 36, 38(2), 41(1) of the Bihar Prohibition and Excise Act, 2016.

3. Learned counsel for the petitioner submitted that petitioner has committed no offence as alleged in the first information report and he has been made accused in this case because he is owner of the vehicle in question. Petitioner has taken the defence that vehicle in question was stolen by someone for which F.I.R. was lodged by son of petitioner on 14.06.2018 vide Didarganj P.S. Case No. 90 of 2018 for the alleged offence under section 379 of the Indian Penal Code. It has been submitted that respondent D.C.L.R. vide order dated 27.03.2021 confiscated the seized vehicle of the petitioner seized in S.Kamal P.S. Case No. 181 of 2018. Petitioner filed appeal before the Excise Commissioner in Excise Appeal No. 700 of 2021, which was dismissed by the respondent-Commissioner without applying judicial mind and thereafter petitioner filed revision before the respondent Additional Chief Secretary bearing Excise Revision No. 226 of 2022, which was finally heard on 01.12.2022 and the same was also dismissed. Learned counsel submitted that the respondent authorities have passed the orders without application of mind as the vehicle in question had been stolen and in connection with theft of the said vehicle the son of the petitioner had already lodged Didarganj P.S. Case No. 90 of 2018 on 14.06.2018. The appellate authority has passed the order dated 25.10.2021 without considering the fact that petitioner is ready to deposit fine for release of his vehicle. In this way, the orders passed by the respondent-authorities are not tenable in the eye of law and are fit to be set aside.

4. Per contra, learned counsel for the respondents submitted that the vehicle in question was standing outside the house and it was found that 552.06 liters of I.M.F.L. was loaded on the vehicle. On basis of reliable information, recovery was made from the vehicle and the vehicle in question was seized. It has been submitted that the order of confiscation dated 27.03.2021 was passed after following due process of law and notice was also issued for auctioning of various vehicles vide memo no. 716 dated 09.07.2021 through paper publication with certain conditions prescribed in the said notice and the said notice was issued after expiry of more than 90 days of passing of the order of confiscation. Public auction of the said vehicle was made and the vehicle in question was sold in favour of highest bidder, Bablu Kumar. It has further been submitted that section 32 of Bihar Prohibition and Excise Act, 2016 states about the “Presumption as to commission of offence in certain cases” and section 32(3) states that, “Where any equipment, machinery, animal vessel, cart, vehicle, conveyance of any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise". Section 32(2) of the Bihar Prohibition and Excise Act, 2016 stipulates that the onus of proving innocence and integrity lies upon the petitioner himself and petitioner failed to rebut this mandatory presumption so raised against owner of the vehicle in question and no satisfactory explanation was given by petitioner as to how the liquor was found in his vehicle. The police rightly instituted prosecution under section 30(a) of the Act and was correct in recommending for the confiscation proceeding as per the provisions of the Act. The vehicle in question was used for illicit transportation of liquor and petitioner has not presented any indisputable and undeniable evidence to prove that the vehicle has not been used for transportation of liquor. Regarding the criminal case for theft lodged by the son of the petitioner, it has been submitted that the said case was lodged by the son of petitioner just to overcome the illegal activities being done by the petitioner as no reasonable explanation was given by the petitioner when the vehicle in question was seized. It has further been submitted that Explanation 1 of Section 57B states that, "It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction". In this way, the respondent authorities have passed the impugned order after considering the materials available on record, and as such, they do not warrant any interference.

5. From perusal of the record, it transpired that there is recovery of huge quantity of 552.06 liters of illicit country made liquor from the vehicle (Bolero Pick-up van) of the petitioner bearing Registration No. BR-01-GD-9104 and on the basis of aforesaid fact, F.I.R. No. 181 of 2018 dated 17.06.2018 was registered in S. Kamal P.S. under sections 30(a), 32(3), 34(3), 36, 38(2), 41(1) of the Bihar Prohibition and Excise Act, 2016. In this context, Section- 58 of Excise Act, 2016 is quite relevant, which reads as under :

> ***"58. Confiscation by District Collector.***
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> *(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."

(underline supplied)

7. In light of the aforesaid section there is a provision in sub-section (5) that 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.

8. We cannot deny that there is recovery of huge amount of illicit country made liquor and petitioner cannot escape from the liability of recovery of such a huge quantity of illicit country made liquor being the owner of the vehicle in question. In light of the statutory provision, as discussed above, the confiscating authority has passed the impugned order after considering the materials available on record and the same has been affirmed by the superior authorities. The orders passed by the confiscating authority, appellate authority as well as the revisional authority are legal and justified. The contention of learned counsel for the respondent is quite tenable in the light of facts and circumstances of the present case. Petitioner has not made out a case so as to interfere with the orders passed by the respondent authorities.

9. In view of the discussion made above, no interference is needed. Accordingly, C.W.J.C. No. 5115 of 2023 stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	25.09.2024
Uploading Date	30.09.2024
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