IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6888 of 2024

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Mahesh Mahto @ Mahes Mahto Son of Gopal Mahto Resident of Village- Jafarpur Police Station- Paroo, District- Muzaffarpur . At present residing at- 06 shyamananda Road, Bhawanipur P.S.- Bhawanipur, District- Kolkata 700025

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Department of Excise, Bihar, Patna.
2. District Magistrate-cum-Collector, Kishanganj.
3. Superintendent of Excise, Kishanganj.
4. Excise Commissioner, Bihar, Patna.
5. District Transport Officer, Kishanganj.
6. Superintendent of Police, Kishanganj.
7. Officer-in-Charge, Kishanganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Prawesh Kumar, Adv.
For the Respondent/s	:	Mr.Prabhat Ranjan, AC to GP 6

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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 : 31-08-2024

This writ petition has been filed by the petitioner against the order dated 24.07.2023 passed by the Excise Commissioner, Patna (respondent no. 4) in Excise Appeal Case No. 91 of 2023 affirming the order dated 07.05.2022 passed by the District Magistrate, Kishanganj (respondent no. 2) in Confiscation Case No. 250 of 2022 arising out of Kishanganj P.S. Case No. 82 of 2022 registered under sections 30(a), 41(1), 43(b) of the Bihar Prohibition and Excise Act, 2016 (18) and sections 467, 468, 420/120B of the Indian Penal Code.

2. By filing the present writ petition, the petitioner has prayed for the following relief(s):-

> *"(i). To issue appropriate writ(s), Order(s) direction(s) in the nature of certiorari quashing the order dated 24.07.2023 passed in Excise Appeal Case No. 91 of 2023 passed by the Commissioner, Excise, Bihar, Patna (respondent no.4) whereby and whereunder the respondent no. 4 has confirmed the order dated 07.05.2022 passed in Confiscation Case No. 250 of 2022 by the learned District Magistrate, Kishanganj (respondent no. 2) without considering the material available on record.*
>
> *(ii) For issuance of appropriate writ/order/direction for quashing the order dated 07.05.2022 passed by the respondent no. 2 without considering the material available on record.*
>
> *(iii) For issuance of appropriate writ/order/direction for compensation to the petitioner as because the vehicle of the petitioner has been auctioned bearing tanker registration no. NL-01AE-9186.*
>
> *(iv). Any other relief or reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case."*

3. Briefly stated, the facts of the case is that there is alleged recovery of 35000 liters of spirit from the tanker in question bearing Registration No. NL-01-AE-9186. On the basis of aforesaid fact, FIR No. 82 of 2022 dated 25.02.2022 was registered in Kishanganj P.S. under sections 30(a), 41(1), 43(b) of the Bihar Prohibition and Excise Act, 2016 (18) and sections 467, 468, 420/120B of the Indian Penal Code .

4. Learned counsel for the petitioner submits that the impugned order has been passed by the confiscating authority without giving any opportunity of hearing to the petitioner as no notice has ever been served on the petitioner and the same has been affirmed by the appellate authority. On this score, the order passed by the confiscating authority is not justified and legal, and therefore, the order passed by the appellate authority is also not tenable in law. Accordingly, the orders passed by the confiscating authority and the appellate authority are fit to be set aside.

5. Learned counsel appearing for the respondent submits that after following due process a notice bearing memo no. 374 dated 28.03.2022 was given to writ petitioner on the address of the petitioner as given in the registration certificate of the vehicle in question, but he did not appear in the confiscation proceeding on the date of hearing, and therefore, finding no way the confiscation order has been passed by the confiscating authority. It is further submitted that the orders passed by the respondent authorities are on basis of the materials available on record and the same need not require any interference.

6. From perusal of the record, it is crystal clear that no notice has ever been served upon the petitioner. A copy of notice contained in Memo No. 374 dated 28.03.2022 has been enclosed as Annexure-R/1 to the counter affidavit filed on behalf of respondent nos. 2 & 3 which can indicate that notice has been issued to the petitioner. Besides, a registry receipt pasted on copy of the notice has also been furnished to indicate that notice has been sent through registered post as well. In the counter affidavit, though there is averment that notice bearing memo no. 374 dated 28.03.2022 was given to writ petitioner but there is no averment in respect of issuance of notice to the petitioner by registered post. Further, there is no service report on record in respect of the notice issued to the petitioner which can indicate service of notice upon the petitioner. On that score, principle of natural justice has not been followed in letter and spirit and the orders passed by the respondent authorities are not justified and legal as the same is against the spirit of natural justice.

7. The Hon'ble Supreme Court in catena of judgments has held that principle of natural justice is equally applicable in quasi-judicial function as well as administrative function to arrive at just decision and it is difficult to see as to why it should be applicable only to quasi-judicial inquiry not to administrative inquiry and it has been settled law that it must logically apply to both. The Hon'ble Supreme Court in the case of ***D.K. Yadav vs. J.M.A. Industries Ltd.*** reported in (1993) 3 SCC 259 observed at para-12 which reads as under:-

> *"12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice."*

The said principle has been recently reiterated by the Hon'ble Supreme Court in the case of ***State Bank of India and Others vs. Rajesh Agarwal and Others*** reported in 2023 SCC OnLine SC 342 in which it has been observed as follows:-

> *“The Principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making*

> *and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities."*

9. In the present case, when action of respondent authorities is decided upon the touchstone of principles of natural justice as observed by the Hon'ble Supreme Court in the cases (cited supra), it is crystal clear that action of respondent authorities is arbitrary as proper procedure has not been adopted. When the concerned authorities passed the order without providing the opportunity to the aggrieved person, on that score order passed by the concerned authorities are against the spirit of law violating the principles of natural justice as observed by the Hon'ble Supreme Court in catena of judgments.

10. In the present case, no notice was served upon the petitioner and thereby he was also not given any opportunity to put forth his case before the competent authority. Petitioner suffered the order of confiscation and thereafter rejection of his appeal by the appellate authority. In the light of given facts and circumstances of the case, orders passed by the respondent authorities are not justified and legal and the petitioner has made out a case so as to interfere with the orders passed by the

confiscating authority as well as the appellate authority.

In view of the discussion made above, the order dated 07.05.2022 passed by the District Magistrate, Kishanganj (respondent no. 2) in Confiscation Case No. 250 of 2022 and the order dated 24.07.2023 passed by the Excise Commissioner, Patna (respondent no. 4) in Excise Appeal Case No. 91 of 2023 are, hereby, set aside. The matter is remanded back to the concerned authority and the concerned authority is directed to pass afresh order in accordance with law within a period of four weeks on receipt/production of a copy of this order. Till passing of afresh order, the respondents are hereby directed to not to auction the subject matter of motor vehicle, if auction proceedings are not completed as on today.

10. With the above observation/direction, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	28.08.2024
Uploading Date	31.08.2024
Transmission Date	