IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1022 of 2021

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Rajesh Tewari Son of Srinath Tiwari Resident of 3, Dilkhush Street, Opposite Circus Avenue S.O. Circus Avenue, Kolkata, West Bengal-700017.

... ... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate-Cum-Collector, Patna.
4. The Senior Deputy Collector, Patna.
5. The Superintendent of Police, Patna.
6. The Officer in Charge, Agamkuan Police Station, District-Patna.
7. Brajesh Kumar @ Brajesh Kumar Pandey, Mohalla- Bagmali, P.S.- Town Hazipur, District- Vaishali 844101.

... ... Respondents.

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with

Civil Writ Jurisdiction Case No. 11740 of 2021

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Brajesh Kumar @ Brajesh Kumar Pandey, Son of Shailendra Kumar Pandey, Resident of Mohalla-Bagmali, P.S.-Town Hajipur, District-Vaishali-844101.

... ... Petitioner.

Versus

1. The State of Bihar through the Secretary, Excise Department, Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Sub-Divisional Officer, Patnacity, District Patna.
5. The Officer-in-charge, Agamkuan Police Station, District Patna.

... ... Respondents.

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Appearance :

(In Civil Writ Jurisdiction Case No. 1022 of 2021)

For the Petitioner	:	Mr. Satyabir Bharti, Advocate.
		Mr. Munna Kumar, Advocate.
		Mr. Abhishek Anand, Advocate.
		Ms. Kanupriya, Advocate.
For the State	:	Mr. Vikash Kumar, Advocate.
For the Respondent	:	Mr. Surendra Kishore Thakur, Advocate.
		Ms. Y. Madhvi, Advocate.
		Ms. Priyam Kumari, Advocate.
		Mr. Manjeet Kumar Roy, Advocate.

(In Civil Writ Jurisdiction Case No. 11740 of 2021)

For the Petitioner	:	Mr. Surendra Kishore Thakur, Advocate.
For the State	:	Mr. AG.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-12-2024

C.W.J.C. No.1022 of 2021:

Pursuant to our order dated 25.11.2024, Dr. Chandrashekhar Singh, District Magistrate, Patna, is present in the Court.

2. In the instant writ petition, the petitioner has prayed for the following relief(s):

> (i). Issuance of a writ of certiorari, quashing the order dated 5.11.2020 (Annexure-5, page 58) passed by the respondent no.4, namely, the Senior Deputy Collector, Patna in Vehicle Confiscation No.819/2020-21 by which in purported exercise of powers conferred under Section 58 of the Bihar Prohibition & Excise Act, 2016, the Tank Lorry bearing registration number NL01L0911 has been confiscated and it has been directed to be sold by public auction;
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> (ii) Issuance of a writ of certiorari, quashing the advertisement dated 19th December, 2020 by which the Tank Lorry bearing registration number NL01L0911 has been advertised to be sold through public auction on 19.01.2021;
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> (iii) Issuance of writ of mandamus, directing the respondents to forthwith release Tank Lorry bearing registration number NL01L0911, since it was not engaged in transport of intoxicant

or liquor and merely on the allegation of some act of omission and commission by the driver, the vehicle cannot be confiscated;

(iv) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."

3. On 25.11.2024, matter was heard at length and Co-ordinate bench passed a detailed order and it reads as under:

"District Magistrate, Patna is hereby directed to appear in person, before the next date of hearing. Having regard to the checkered history of the present case from 18.03.2020 till date, there are serious lapses on the part of the officials at every stage. Few are the examples, that initially subject vehicle was auctioned to the 7th respondent and he had purchased for a sum of Rs. 3,89,700/- and further he is alleged to have invested a sum of Rs. 4 lakh. By virtue of judicial pronouncements, the aforementioned auction was cancelled and vehicle was recovered from the 7th respondent and it was handed over to the jurisdiction police. Such handing over the vehicle was subject to outcome of a present litigation. Despite these factual aspects, the concerned authority proceeded to re-auction the subject matter of vehicle and created third party right on 25.01.2023 and it was auctioned for the second time at Rs. 6,05,500/-. The second auction was a clear contempt of Court committed by the respondents. In all fairness they should have sought permission of this Court before proceeding for the second auction on 25.01.2023 and the same has not been resorted to. Further it is to be noticed that pursuant to first auction, the vehicle was recovered after cancellation of auction. However, first auction purchaser dues have not been settled in the manner known to the law even to this day. It is also to be noticed that as on the date of the seizure of the vehicle on 18.03.2020, the vehicle was insured and insurance valued was at Rs. 14,00,000/-. This is evident from the insurance policy. On the other hand, learned counsel for the state disputed the aforementioned policy to the extent that it is not worth about Rs. 14,00,000/- and the document must have alleged to be created one for the purpose of claiming the dues of the petitioner. In this regard, no material has been placed on record. Moreover, due to avoiding these type of disputed issues like diary of the vehicle as on the date of seizure of the vehicle and its auction, certain procedure were required to be drawn by the competent authority like Mechanical Engineer or Automobile Engineer. Such person has to access the vehicle in the manner known to the law under the Motor Vehicles Act read with the rules, the same has not been resorted to in any of the proceedings which we have come across in number of cases. On the other hand, randomly valuation of the vehicle or premises has been conducted and proceed to auction after advertising the same in the newspaper. The concerned authority was bound to issue show cause notice to an individual capacity to such of those person/s aggrieved by such auction proceedings. On the other hand, straightway auction proceedings have been notified in the newspaper. In fact, we have come across more than one case, if the owner of the vehicle is in some other district whereas the advertisement issued in the newspaper is restricted to at different district, even we have come across, it was notified in different state, for example, in one of the case, we have come across in the case of owner is from the Nagaland whereas auction advertised through newspaper was in State of Bihar. These things have not been taken note of for these many years in umpteen number of excise cases. However, the officials are keep on committing one or the other error whether it is knowingly or unknowingly, there is inaction on the part of the superiors against such erring officials despite our earlier orders in not following or adhering to the relevant rules and procedures.

In the present case, in not recording the status of the vehicle as on 18.03.2020 by competent authority like, Automobile/Mechanical engineer. The first auction purchaser submitted that he has invested 4 lakh rupees on the purchased vehicle. In such an event how to draw inference, whether as on the date of auction purchase the vehicle condition was so bad so as to invest 4 lakhs against a purchase of auction vehicle at Rs.3,89,700/- that means he has invested 100%.

2. In order to avoid all these issues, the concerned Additional Chief Secretary/Principal Secretary of the Excise Department is hereby directed to issue necessary guidelines to such of those officers who are all involved in the seizure of the vehicle for the alleged offences under the Excise Act. Further till Appellate Authority passes order including auction purchase and other procedures, for the reasons that in the present case, *prima facie*, petitioner as well as 1st auction purchaser have made out a case that they are tentatively entitled to a sum of Rs.14 lakhs plus interest on behalf of the petitioner and first auction purchaser @ Rs. 7,89,700/-. If these amounts are required to be determined and it is required to be disbursed in favour of the petitioner and first auction purchaser, in that event, the amount is required

to be paid from the taxpayers money.

3. In the present case, the concerned Appointing Authority/Disciplinary Authority has to take necessary steps in initiating departmental inquiry and further charges should be insofar as recovery of the aforementioned amount may arise. In this regard, District magistrate Patna is hereby directed to take note of entire material and draw an inference as to how matter is required to be resolved before the next date of hearing, failing which we are compelled to pass order that the petitioner is entitled to a sum of Rs. 14 lakhs plus interest. Similarly, first auction purchaser is entitled to Rs. 7,89,700/- plus interest with reference to relevant dates and events.

4. Re-list this matter on 09.12.2024.

5. Copy of this order be made available to the Chief Secretary through Registry of this Court."

4. Today, counter affidavit has been filed on behalf of respondent no.3 along with Annexures-R/A, R/B and R/C. They have calculated their own method in arriving at a particular figure in respect of petitioner and first auction purchaser. Petitioner is concerned with the Insurance Policy dated 05.02.2020 that was in vogue till 04.02.2021 and it was insured for Rs.14 lacs read with the date of seizure as 18.03.2020. They have totally ignored Insurance Policy which was insured in a National Insurance Company, which is one of the sister concern of the General Insurance Company of the Government of India. On the other hand, they have resorted to their own method while furnishing a Table-1 and it reads as under:

<table>
<tr><td>1.</td><td>Date of purchase of vehicle</td><td>16-12-2013</td></tr>
<tr><td>2.</td><td>Date of auction of vehicle</td><td>10-01-2021</td></tr>
<tr><td>3.</td><td>Duration between purchase date and auction date</td><td>About 7 years</td></tr>
<tr><td>4.</td><td>Total depreciation percentage</td><td><table>
<tr><td>First 5 years</td><td>50%</td></tr>
<tr><td>6th year</td><td>10%</td></tr>
<tr><td>7th year</td><td>20% (as vehicle was parked (immovable) condition)</td></tr>
<tr><td>Total;</td><td>80%</td></tr>
</table></td></tr>
<tr><td>5.</td><td>Approximate purchase value of the vehicle</td><td>Rs.21,99,000/-</td></tr>
<tr><td>6.</td><td>Total depreciation (80 percent) amount</td><td>Rs.17,59,200/-</td></tr>
<tr><td>7.</td><td>Valuation after 7 years of depreciation</td><td>Rs.4,39,800/-</td></tr>
<tr><td>8.</td><td>6% annual interest on Rs.4,39,800/- from date of auction (19-01-2021) to 09-12.2024</td><td>Rs.1,02,627/-</td></tr>
<tr><td>9.</td><td>Total amount payable to Shri Rajesh Tewari</td><td>Rs.4,39,800/-(principal amount) + Rs.1,02,627/- (total interest)=</td></tr>
</table>

		Rs.5,42,427/-

Similarly, Table-2 insofar as first auction purchaser.

5. First auction purchaser who had purchased vehicle in auction on 19.01.2021 whereas the Insurance Policy was in vogue till 04.02.2021, resultantly he has proceeded to insured the vehicle while paying a sum of Rs.59900/- Similarly, he has invested a sum of Rs.10895/- towards tax. Therefore, the petitioner is entitled to Rs.5,00,000/- compensation including a sum of Rs.5,42,427/-, over all Rs.10,42,427/-. Similarly, first auction purchaser is entitled to Rs.4,71,206/- +Rs.59,900/- towards a fresh Insurance Policy obtained by him read with tax invoice a sum of Rs.10895/- and a sum of Rs.2,00,000/- towards compensation for unnecessarily harassing the first auction purchaser and cancelling his bid at later stage and once again vehicle was auctioned for the 2nd time while treating the vehicle as scrap.

6. The aforementioned decision has been taken by us in order to give quietus to the litigation, otherwise certain disputed facts are involved in order to investigate as to why petitioner got his vehicle insured on 05.02.2020 for about Rs.14 lacs with reference to the vehicle was 7 years old read with the fact that vehicle value as on the date of its purchase on 16.12.2013 would be around Rs.21,99,000/- Similarly, first auction purchaser in his C.W.J.C. No.11740 of 2021 has made certain statement to the extent that he has invested few lakhs of rupees on the vehicle other than Insurance and tax invoice. To that effect, he has not produced any invoice. At this stage, he intends to produce the same. The same is not appreciable in view of the fact that he could have produced whatever the invoice as on the date of filing his writ petition (C.W.J.C. No.11740 of 2021).

7. The District Magistrate, Patna, Dr. Chandrashekhar Singh, who is present in the Court submitted that certain disciplinary proceedings have been initiated against such of those erring officials/employees by which they had committed various serious blunder including violation of the Co-ordinate Bench interim order to the extent of not to auction the subject matter of vehicle till disposal of C.W.J.C. No.1022 of 2021. If it is so, the disciplinary proceedings shall be strictly conducted in accordance with the relevant Disciplinary Regulations or Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and completed within a period of six months from the date of receipt of this order. If the charges are already framed against such of those erring officials/employees in that event additional charges shall be framed insofar as whatever the burden on the

State exchequer due to the above payments to the petitioner and first auction purchaser, the same shall be calculated. Accordingly, additional charges shall be framed against such of those erring officials/employees. If the charges are not framed, appropriately charges should be framed including the loss caused to the State exchequer and the recovery is required to be ordered. The above exercise shall be completed by the concerned officials within a period of four weeks from the date of receipt of this order including payments to the petitioner and first auction purchaser.

8. With the above observations, the instant writ petition stands disposed of.

9. We are not interfering with the confiscation proceedings initiated and concluded against the petitioner for the reasons that he has statutory remedy of appeal before the Appellate Authority and it requires matter to be decided on merit. Thus, the petitioner is at liberty to file an appeal before the Appellate Authority. If such appeal is filed, the same shall be decided within a period of three months from the date of receipt of such appeal.

C.W.J.C. No.11740 of 2021:

10. In the light of the aforesaid order passed in C.W.J.C.

No.1022 of 2021, the instant writ petition (C.W.J.C. No.11740 of 2021) stand disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2024.
Transmission Date	NA