IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13735 of 2024

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Sarwan Keshri @ Sarwan Prasad Keshri Son of Late Ratandev Keshri @ Latandev Prasad Keshri, resident of Village-Dilwarpuri Bara, P.S.-Kotwali (Purabsarai O.P.), District-Munger (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition Excise and Registration Department, Government of Bihar, Patna.
2. The Excise Commissioner, Prohibition Excise and Registration Department, Government of Bihar, Patna.
3. The District Magistrate, Munger.
4. The Additional District Magistrate, Munger.
5. The Superintendent of Police, Munger.
6. The Superintendent of Excise, Munger.
7. The Station House Officer, Kotwali P.S., District-Munger.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kumar Choudhary, Adv.
		Mr. Akshansh Ankit, Adv.
For the Respondent/s	:	Mr. A.P. Singh, SC- 15
		Mr. Deepika Sharma, AC to SC 15

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-12-2024

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

> *"(a) To quash order dated 13.05.2024, passed in Excise Revision Case No. 10/2024 passed by the Respondent No. 1 whereby and hereunder order dated 04.12.2023*

passed in Excise Appeal No. 147 of 2023 passed by the Respondent No. 2 was affirmed in a most mechanical and arbitrary manner without assigning any reasons whatsoever in utter disregard of the principles of natural justice.

(b) For a direction upon the Respondent authorities to unseal the room in the joint house of the Petitioner situated at Dilwarpur Bara (Purubsarai O.P., Kotwali P.S., District – Munger) which was sealed in connection with Kotwali P.S. (Purubsarai O.P) case No. 124/23.

(c) To pass any other order/orders in shape of a consequential relief to which the petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand"

2. Learned counsel for the petitioner restricted his argument to the extent that there is a violation of Rule 13B(1)(2) of Bihar Prohibition & Excise Rules, 2021 insofar as steps to be taken by the Police/Excise Officer in furnishing report to the Collector/ Deputy Collector for further taking confiscation proceedings.

3. *Per Contra*, learned counsel for the respondent resisted the aforementioned contention and submitted that even though the Police Officer's report dated 07.05.2023 is not in compliance to rule 13(B)(1)(2). However, there is a delay in processing the matter before the concerned authority. Therefore, there is no violation of rule 13(B)(1)(2) of Bihar Prohibition and Excise Rules, 2021.

4. Heard learned counsels for the respective parties. Core question involved in the present list is whether the respondents have violated the Rule 13(B)(1)(2) of Bihar Prohibition and Excise Rules, 2021 or not. It is necessary to reproduce Rule 13(B)(1)(2) and it reads as under:

> *"(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.”

[underline supplied]

5. Reading with Rule 13(B)(1) read with (2), it is evident that the concerned authorities have been assigned certain duties insofar as submission of report to the confiscating authority – District Magistrate/Deputy Collector to the extent that report shall be furnished within a period of 30 days. In the event of any delay in such circumstances, the concerned reporting authority has to assign the reasons.

The same has not been complied. So also, there is non compliance to Sub Rule (2) of Rule 13 of Rules 2021.

6. Learned counsel for the respondent's contention is that matter was under process before the different authorities. Such extraneous material cannot be taken into consideration to improve the report dated 07.05.2023 of the police or Excise authority insofar as the same was submitted before the District Magistrate/Deputy Collector. Hon'ble Supreme Court in the case of **Mohinder Singh Gill vs. Chief Election Commissioner** reported in **(1978) 1 SCC 405** held that by means of affidavit, authority cannot improve the facts of the case in the absence of necessary factual aspects as on the relevant date.

7. In view of these facts and circumstances and the fact that there is violation of Rule 13(B)(1)(2) of Rules 2021, the petitioner has made out a case.

8. Accordingly, the impugned order dated 13.05.2024 passed in Excise Revision Case No. 10 of 2024 stand set aside and the present CWJC No. 13735 of 2024 is

allowed.

9. The concerned authorities are hereby directed to release the subject matter of premises forthwith.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Nirajkrs/-

AFR/NAFR	AFR
CAV DATE	NA
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