

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13165 of 2024

Sarweshwar Kumar Sharma son of Kameshwar Prasad Sharma, Resident of 48/B/H/29 Khiddirpur VTC Opp. Khiddirpur Post Office, PS Khiddirpore SO, District Kolkata, West Bengal, PIN Code-700023.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Excise and Prohibition, Bihar, Patna.
2. District Magistrate cum Collector, Banka.
3. Superintendent of Excise Banka.
4. Superintendent of Police at Banka.
5. Officer in Charge Bounshi, District Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s : Mr. Standing Counsel (6)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-09-2024

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

"(i) for issuance of appropriate writ order or direction or writ in the nature of Mandamus commanding the Respondent to release the Container truck (closed body Truck) bearing Registration Number NL-01D0712 of the petitioner since any proceeding for confiscation of Commercial Container Truck (closed body Truck) under the provisions of Bihar Excise & Prohibition Act shall be misuse of law, even in case Driver



to the petitioner's Truck was found to have consumed alcohol.

(ii) for issuance of appropriate writ order or direction or writ in the nature of Mandamus commanding the Respondent that registration of Special Excise Case No. 80 of 2024 for the simple violation of Motor Vehicles Act when driver to the petitioner's Truck bearing Registration Number NL-01D0712 committed accident by rash and negligent driving allegedly under influence of alcohol that too on the basis of breath analyzer test is illegal and arbitrary exercise of power with sole motive to confiscate the Truck under Bihar Excise & Prohibition Act.

(iii) for issuance of appropriate writ order or direction or writ in the nature of Mandamus commanding the Respondent that the confiscation of commercial Container Truck bearing Registration Number NL-01D0712, for simple violation of Law in which the Driver to the petitioner's Container Truck allegedly consumed liquor in Jharkhand and tested positive in municipal boundary of Bihar where consumption of alcohol prohibited under Bihar Excise & Prohibition Act as such even it is proved that the Driver met with an accident while negligently driving under influence of alcohol even then confiscation of Container Truck is not permissible in view of various pronouncement of Hon'ble High Court and Supreme Court of India and on the basis of Bihar Excise & Prohibition (Amendment) Act, 2018.



(iv) for issuance of appropriate writ order or direction or writ in the nature of Mandamus commanding the Respondent that keeping the vehicle under custody of Excise Officers for the purpose of confiscation shall be highly illegal since no amount of liquor was found in possession of Driver except the fact that the driver to Container Truck (closed body Truck) bearing Registration Number NL-01D0712 was found to have consumed liquor on the basis of inaccurate breath analyzer test.

(v) Any other relief(s) to which the petitioner be found to be entitled."

2. In support of aforementioned relief there is no demand before the competent authority in particularly under Rule of 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Sub-Rule 2 of Rule 12A in the year 2022 and 2023.

3. In the absence of demand before the competent authority, the present writ petition for writ of mandamus is not maintainable or it is pre-mature. Accordingly, the present petition stands disposed of as pre-mature.

4. Disposal of the present petition would not be a hurdle for the petitioner to invoke remedy under Rule 12A of Bihar Prohibition and Excise Rules, 2021 including amended provisions in the year 2022 and 2023. If such application is



submitted in the prescribed form before the competent authority, the competent authority shall pass speaking order within a period of two weeks from the date of receipt of such application.

5. If the confiscation of the vehicle has attained finality, in that event, petitioner is at liberty to prefer an appeal before the appropriate authority.

6. With the above observation, the present petition stands disposed of.

(P. B. Bajanthri, J)

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.09.2024
Transmission Date	N/A

