

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18607 of 2023

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Mahesh Kumar Son of Raj Kumar Mahto, Resident of Ward No. 7 Village-
Singhiya Bujurg, P.S.- Bibhutipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary cum Excise Commissioner Prohibition,
Excise and Registration Department, Government of Bihar, Patna.
2. The District Magistrate cum Collector, Samastipur.
3. The Deputy Collector Land Reforms, Samastipur.
4. The Superintendent of Police, Samastipur.
5. The Station House Officer Khanpur, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sonu Kumar Chaudhari
For the Respondent/s : Mr.Arvind Ujjwal (SC-4)
Mr. V.P. Singh (A.C. to S.C-4)

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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 : 05-03-2024

In the instant petition, petitioner has prayed for following

relief(s):-

*For issuance of an appropriate
order, direction, writ in the nature of Writ of
certiorari for setting aside the order dated
15.09.2023 (Annexure-P/3) passed by
Respondent No. 4 in case No. 48/2023-24 (State
Vs. Mahesh Kumar) whereby and where under
the Learned Deputy Collector Land Reform,
Samastipur imposed penalty of Rs. 1,81,800/-
along with surcharge of Rs. 5,454 in Form IV of
Bihar Prohibition and Excise (Amendment) Rule
2022 sub Rule 2 of rule 3 as 50% of insured
declared value (IDV) of vehicle in question.*

*(ii) For further issuance of an
appropriate order, direction, writ in the nature
of Writ of Mandamus for directing the*



Respondent No. 4 to reconsider the amount of penalty in light of amended sub rule 2 of rule 12(A) of the Bihar Prohibition and Excise Rules 2023 notified on 31.05.2023 which provides for amount of penalty should be between 10% of the insured value as minimum and rupees 5 lac as maximum.

(iii) For further issuance of an appropriate order, direction, writ in the nature of Writ of Mandamus for directing the respondents for reasonable determination of penalty after giving the petitioner an opportunity of hearing.

(iv) For any other relief or reliefs to which the petitioner may be found entitled in the fact and circumstances of the present case.

2. Petitioner without exhausting the statutory remedy of

appeal before the appellate authority under Section 92 of Bihar Prohibition and Excise Rule, 2016, has rushed to this Court in filing the present writ petition. Dispensation of filing appeal and to entertain writ petition, aggrieved person has to apprise this Court that there is violation of statutory provision or impugned action has been taken by incompetent authority. Both the ingredients have not been made out. Accordingly, the present petition stands disposed of as premature.

3. The petitioner is hereby directed to file appeal before the appellate authority against the confiscation order dated 15.09.2023. In the statute, there is no provision for condonation of delay. Therefore, the appellate authority need not insist for condonation of delay or he cannot decide appeal on the ground of delay. That apart delay is not much as is evident from the confiscation authority order dated 15.09.2023. Therefore, petitioner would invoke remedy of appeal and it would be within a reasonable period of time. Therefore, the petitioner is hereby



directed to file memorandum of appeal before the appellate authority under Section 92 of Bihar Prohibition and Excise Rule, 2016 within a period of three weeks from today. If such appeal is filed before the appellate authority, the appellate authority is hereby directed to decide the appeal within a period of three months from the date of receipt of this memorandum of appeal to be filed by the petitioner.

4. With the above observations, petition stands disposed of.

5. At this stage, learned counsel for the petitioner submitted that petitioner may be permitted to invoke remedy under Rule 12-A of the Bihar Prohibition and Excise Rule, 2021 read with Amended Rules 2022 and 2023. Petitioner is permitted to choose any of the aforementioned provision of law.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

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

