IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11439 of 2025

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Bishop Hartmann Academy Ara Gate, Ranchi Jharkhand through its Principal Cyril Ossie Martis, male, aged about 59 years son of Sri Lazarus Madhtha, resident of Bishop Hartmann Academy, Ara Gate, P.S. Tatisilvai, Ranchi-835103, District Ranchi, State Jharkhand

... ... Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Bihar, Patna.
2. Secretary, Department of Excise and Prohibition, Bihar, Patna.
3. Excise Commissioner, Government of Bihar, Patna.
4. Collector cum District Magistrate, Buxar District, Buxar.
5. Superintendent of Police (Excise), Buxar District, Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. K.M. Joseph, Advocate Ms. Upasana Vibha Toppo, Advocate Mr. Cebin Mathew, Advocate
For the Respondent/s	:	Mr. Jai Prabhat Kishore, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 13-11-2025

Heard Mr. K.M. Joseph, learned counsel appearing on behalf of the petitioner, assisted by Ms. Upasana Vibha Toppo, learned counsel and learned AC to SC-13.

2. The present writ application has been filed by the petitioner with the following reliefs:

(1) To set aside the impugned order dated 27.12.2024 (Annexure-11) passed by the Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna. Respondent No. 2, the

Revision Authority under the Bihar Prohibition and Excise Act 2016, hereinafter referred to as the Act, in Revision Case No. 18 of 2024 dismissing the Revision Petition and upholding the impugned order dated 08.04.2024 passed by the Excise Commissioner Patna in Excise Appeal No. 13 of 2024 wherein the Learned Commissioner had in part upheld order dated 06.12.2023 passed u/s 57B of the Act by the District Magistrate, Buxar in Excise Case No. 473 of 2023 confiscating the Innova Crysta Motor Vehicle of the petitioner and imposing penalty of Rs. 5 Lakhs for its release; and

(2) To set aside impugned order dated 08.04.2024 passed u/s 92 of the Act by the Excise Commissioner Bihar, Respondent no. 3, in Excise Appeal No. 13 of 2024 upholding in part order passed by the District Magistrate, Buxar in Excise Case No. 473 of 2023 confiscating the Innova Crysta Motor Vehicle of petitioner and imposing maximum penalty for its release; and

(3) To set aside impugned order dated 06.12.2023 passed u/s 57B of the Act by the District Magistrate, Buxar, Respondent No. 4 in Excise Case No. 473 of 2023 confiscating the Innova Crysta Motor Vehicle of petitioner and imposing maximum penalty for its release; and

(4) To direct appropriate action against the Superintendent of Police (Excise), Buxar for impounding the Innova Crysta Motor Vehicle of petitioner on wholly arbitrary and

baseless charges and its arbitrary detention in custody for 33 long days and thereafter its forwarding to the District Magistrate u/s 56 of the Act for its confiscation without any admissible evidence of the vehicle being employed/being used for transportation of illicit liquor; and

(5) To direct refund to the petitioner by State Respondents the full amount of the penalty collected u/s 57B of the Act from the petitioner, who is the owner of the confiscated Innova Crysta Motor Vehicle, along with due applicable interest; and

(6) Direct payment of compensation to the petitioner for the loss and damages incurred by the petitioner institution and its authorities due to the arbitrary action of the Respondents, involving arbitrary detention and impounding and confiscation of the motor vehicle of the petitioner school.

3. The learned counsel appearing on behalf of the petitioner has submitted that the petitioner-Bishop Hartmann Academy, Ara Gate, Ranchi is a Higher Secondary School situated in the state of Jharkhand which has been established and administered by the Religious Order of Friars Minor, a congregation of Religious Men in the Catholic Christian Church. It has been submitted that the petitioner is the owner and proprietor of the Innova Crysta motor vehicle with Engine No. 2TRB031731, Chassis No. MBJAX3E500423601, Registration No. JH-01EY-

3786 registered in the name of the petitioner's school, Bishop Hartmann Academy.

4. Mr. Joseph, learned counsel for the petitioner has submitted that on 25.09.2023, the aforesaid motor vehicle, which was being driven by one Ajay Toppo – an employee of the school, was intercepted at the Veer Kunwar Singh Check Post in Buxar by the police and the vehicle was searched and the driver Ajay Toppo was arrested on charge of having consumed alcohol and on search of the vehicle police found in the boot space of the car, an open bottle of foreign liquor of 750 ml capacity with 200 ml of foreign liquor in it.

5. In pursuance to such search and seizure, an FIR being Buxar (Excise) P.S. Case No. 667 of 2023 for the offences under Sections 30(a) and 37 of the Bihar Prohibition and Excise Act, 2016 was instituted against Ajay Toppo, the driver.

6. It has been submitted that the driver Ajay Toppo was allegedly in inebriated condition and 200 ml of liquor was found in an open bottle of foreign liquor of 750 ml capacity from the boot space of the car, which he was driving, the driver was apprehended and remanded to judicial custody by order dated 26.09.2023 passed by the learned Special Judge. He was subsequently released on bail by the said Court vide order dated 05.10.2023.

7. Learned counsel for the petitioner submits that in complete violation of the provisions of the Bihar Prohibition and Excise Act (hereinafter referred to as the “Excise Act”), the Excise Superintendent arbitrarily detained the car and after an extended 33 days of detention, proposed for confiscation of the motor vehicle under Section 56 of the Bihar Prohibition and Excise Act by addressing the Collector-cum-District Magistrate, Buxar by his Letter No. 2530 dated 28.10.2023. It has been pointed out that the Excise Superintendent did not provide the Collector with any detail of any commercial quantity of liquor or intoxicants under transportation that had been seized by the police as required by Clause-3 of Sub-Section 2 of Section 56 of the Act. The Collector-cum-District Magistrate, Buxar, the competent authority ignoring the facts of the case and without acknowledging that no quantity of liquor or intoxicant was under transportation by the seized Innova Crysta motor vehicle and without recording any finding to the effect that the motor vehicle of the petitioner was being used for transportation of illicit liquor or intoxicant, the Collector by an interim order dated 07.11.2023 confiscated the motor vehicle of the petitioner and imposed the maximum penalty of Rs. 5 lakhs (Five Lakhs) plus service charges on the petitioner for releasing its motor vehicle.

8. By order dated 06.12.2023, the Collector-cum-District Magistrate, Buxar confirmed the interim order and directed release of confiscated motor vehicle to its owner i.e. the writ petitioner. The petitioner being aggrieved by and dissatisfied with the impugned order dated 06.12.2023 passed in Confiscation Case No. 473 of 2023, preferred an appeal before the Excise Commissioner under Section 92 of the Act being Excise Appeal No. 13 of 2024.

9. The grounds raised by the petitioner was primarily to the effect that there was no recovery of any commercial quantity of illicit liquor from the motor vehicle of the petitioner and the petitioner had at no time allowed the motor vehicle to transport illicit liquor and as such no case of transportation of liquor could have been lodged in this matter. The Superintendent (Excise), Buxar has erred in confiscating the motor vehicle of the petitioner's school and therefore, the order directing confiscation was misdirected and was fit to be set aside.

10. It has been submitted that even the Excise Commissioner, Bihar without considering the aforesaid facts and circumstances of the case, especially the fact that no liquor was found being transported, only partially allowed the appeal and modified the order passed by the Collector imposing maximum penalty of Rs. 5 lakhs. The penalty was reduced to the extent of 10% of the insured value of the vehicle.

11. Learned counsel for the petitioner has admitted that the petitioner had initially approached this Hon’ble Court assailing the order passed by the Excise Commissioner, Bihar, the appellate authority by filing C.W.J.C. No. 11839 of 2024, however, this Hon’ble Court taking note of the submissions of the respondents that the petitioner had not exhausted the available alternative remedy of revision under Section 93 of the Excise Act, was pleased to allow the petitioner to withdraw the writ application to avail the alternative remedy of revision before the State Government.

12. It has been submitted that in compliance of the order dated 23.09.2024 passed in C.W.J.C. No. 11839 of 2024, the petitioner moved before the Secretary, Excise and Prohibition Department, Government of Bihar in Revision Petition No. 18 of 2024 challenging the appellate order, however, the Revisional authority could not appreciate that there was no seizure or recovery of any commercial quantity of alcohol under transportation from the confiscated vehicle of the petitioner and an amount of 200 ml of liquor found in an open bottle of 750 ml capacity from the possession of the driver, who was allegedly in an inebriated condition, dismissed the revision petition preferred by the petitioner vide ordr dated 27.12.2024.

13. Learned counsel for the petitioner further submits that all the three impugned orders, passed by the confiscating authority,

the appellate authority as well as the revisional authority respectively have been passed arbitrarily, without due application of mind to the facts of the present case and as such those are bad in law and liable to be set aside.

14. Learned counsel for the petitioner thus submits that the respondents have erred in realizing a penalty to the tune of 10% of the insured value of the motor vehicle in a case, where admittedly the owner is the petitioner-school. The statutory authorities failed to appreciate that there was no liquor or intoxicant being transported with the aid of the said vehicle, thus order of confiscation or even imposing penalty for release of the said vehicle was against the statutory provisions and thus not tenable in law.

15. Therefore, it is submitted that the petitioner is entitled for not only a refund of the amount, which has already been realized from the petitioner *i.e.* 10% of the insured value to the tune of Rs. 2,13,513/- (Two Lakhs Thirteen Thousand Five Hundred Thirteen), the petitioner would be entitled also for payment of interest and compensation for the monetary loss and the disrepute caused to the petitioner's institution.

16. It is submitted that for his arbitrary action appropriate proceeding be ordered against the Superintendent (Excise), Buxar.

17. 15. On the other hand, the learned AC to SC-13 has submitted that the present writ application is misconceived as the

vehicle in question was seized after recovery of the illicit liquor from the vehicle and as per the provisions of the Excise Act, the said vehicle was to be confiscated or released after paying penalty in terms of Rule 12(A) of the Bihar Prohibition and Excise Rules, 2021 (as amended vide Amendment Rules, 2022) and in the present case, the vehicle of the petitioner was released on payment of the minimum penalty. It has been submitted that the vehicle of the petitioner has been released by the order of the District Magistrate dated 06.12.2023 and in view of the fact that ultimately only minimum penalty has been imposed by the appellate authority keeping in view the recovery of small quantity of intoxicant from the vehicle of the petitioner. It is submitted that for the offence under the Excise Act, an FIR has also been lodged against the driver, therefore the prayer of the petitioner is fit to be rejected and the writ petition be dismissed.

Consideration

18. We have heard learned counsel for the parties and have also gone through the various orders passed in the confiscation proceeding including the appellate as well as revisional order; we find that the aforesaid impugned orders have failed to take into account a very basic requirement under the Statute. Section 30(a) of the Excise Act, would be attracted only when a person is using a vehicle to transport intoxicant/liquor.

Section 30(a) of the Excise Act stipulates as under:

> *"[30.* ***Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.****— Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorization granted thereunder-*
>
> *(a) manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or*
>
> *(b)……."*

19. From perusal of the same, the aforesaid Section clearly says that "*whoever*" is found in contravention of the provisions of the Act is made an accused for such offence and in the present case admittedly the FIR has been lodged only against the driver who was arrested in an inebriated condition and not against the owner of the vehicle. We are aware that only 200 ml of foreign liquor was recovered in the present case from the boot of the car. In view of the aforesaid, it is apparent that no case was lodged against the owner of the seized vehicle and therefore, on a conjoint reading of Section 30 and 56 of the Excise Act, it would be evident that confiscation of the seized item can be done only when an offence punishable under the Excise Act is committed. Section 57B which provides for release of things or premises upon penalty specifies

"vehicle/conveyance used for commission of any offence under the Act." Thus, only if the said vehicle was being used in the commission of such offence, penalty could have been imposed upon the petitioner.

20. The issue involved in the present case has been dealt with by a Division Bench of this Court in the case of ***Sunaina @ Suneina vs. State of Bihar & Ors*** reported in ***2024(3) BLJ*** Page 163, wherein the Hon'ble Court, has opined in paragraph-20 of the judgment as under:

> *"The first and foremost thing, which emerges from the aforesaid discussion of the statutory provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is sine qua non for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction."*

21. In the case of ***Mohammad Basim Akram vs. State of Bihar*** reported in ***2022 (6)BLJ 540,*** it has been held that when the

driver of a vehicle is found to be carrying some quantity of intoxicant or liquor in the vehicle for his personal consumption without any knowledge of the owner of the vehicle, such vehicle cannot be construed of having indulged in transportation of illicit liquor.

22. We have already observed that in the present case only 200 ml of foreign liquor in a 750 ml bottle was found in the boot of the vehicle, owned by the petitioner and the driver was in an inebriated condition when he was apprehended and such fact was even confirmed by the breath analyzer test.

23. Looking into the aforesaid judicial pronouncements and by applying the same in the facts of the case in hand, we have seen that the driver of the vehicle, was found in an inebriated condition and 200 ml of liquor was recovered from the boot of the vehicle. It was only the apprehended driver of the vehicle who was made an accused in the present case. In such a situation, proceeding ahead with an assumption that the vehicle was being used to carry intoxicants is an erroneous step taken by the authorities and it is against the spirit of the Statutory provisions. We have already observed that the petitioner/owner of the vehicle has not been made an accused with no allegation of direct or indirect involvement in the commission of the said offence.

24. In view of the aforesaid facts and circumstances of the case, we find that the seizure and further confiscation of the vehicle of the petitioner under the Excise Act with an assumption that the vehicle was being used in carrying or transporting the liquor or intoxicants cannot be justified, hence the impugned orders are arbitrary and violative of the statutory mandate and these are liable to be quashed. The petitioner whose right to property has been violated is also entitled for adequate compensation on account of forced litigation.

25. In view of the aforesaid, the impugned orders dated 27.12.2024 passed by the Secretary, Excise Commissioner, Bihar in Excise Revision Case No. 18 of 2024; order dated 08.04.2024 passed in Excise Appeal No. 13 of 2024 by the Excise Commissioner, Bihar and the order dated 06.12.2023 passed in Excise Case No. 473 of 2023 by the District Magistrate, Buxar are quashed.

26. The District Collector, Buxar is directed to refund the remaining amount deposited by the petitioner to the tune of Rs. 2,13,513/- (Two Lakhs Thirteen Thousand Five Hundred Thirteen) along with 9% simple interest from the date of deposit of the said amount till the date of payment. It is further directed that Rs. 25000/- be paid to the petitioner towards cost of litigation by the

State the interest and lost amount shall be realized from the erring officials in accordance with law.

27. It goes without saying that the refund amount along with the interest as well as litigation cost, as directed above, should be paid within a period of four weeks from the date of receipt of the present order.

28. Accordingly, the writ petition is allowed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2025
Transmission Date	