IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19259 of 2024

==

Madhu Transport Co Rajneesh Jain a partnership concern, having its office at Indian Oil Petrol Pump, Opposite J.P. Resort, Partapur, Meerut (Uttar Pradesh)- 250103 through its constituted attorney Mukesh Kumar Prasad (Male) aged about 28 years, Son of Sri. Ramesh Prasad, resident of Village- Alekhi Tola, P.S.- Barhara, District- Bhojpur, Bihar- 802311.

... ... Petitioner/s

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, Begusarai.
4. The Senior Superintendent of Police, Begusarai.
5. The Station House Officer, Phulwaria Police Station, Begusarai.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Sr. Advocate
Ms. Kanupriya, Advocate
Mr. Abhishek Anand, Advocate

For the Respondent/s : Mr. G.P. Ojha, GA-7
Mr. Abhinaw Ashok, AC to GA-7

==

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

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date: 25-04-2025

Heard the parties.

2. Police highhandedness is nothing but misuse of power or authority by Law Enforcement Officers in ways that are excessive, unreasonable or arbitrary, often without considering the rights or well being of citizens. It can manifest

in various forms, including excessive force, arbitrary arrests, illegal searches, illegal seizures of consignment, and discriminatory practices. It infringes upon the constitutional rights of individuals including the right to freedom of expression, assembly, right to practice any profession, or to carry on any occupation, trade or business and due process. Whenever the police indulges into highhandedness it erodes public confidence in law enforcement and weakens the rule of law. The court is compelled to make these observations in the backdrop of the facts of this case, a discussion of which shall reveal the arbitrary and highhanded manner in which the police officials of Fulwariya Police Station, District-Begusarai have acted in seizing the tanker bearing Registration no. UP-15-FT3741 containing 40000 liters of ethanol on mere apprehension (totally misplaced) that ethanol/spirit was being taken out from the tanker in question while being enroute to its final destination.

3. The case of the petitioner is that it is a Partnership Firm having its office at Indian Oil Petrol Pump, Opposite J.P. Resort, Pratappur, Meerut-250103. Petitioner is the owner of tanker bearing Registration no. UP-15-FT3741. HMG Bulk Carriers (Rajneesh Jain) is a sister concern of the petitioner. The

petitioner is engaged in providing transportation services to its clients and transports various kinds of goods throughout the country. The petitioner was engaged by M/s. Bihar Distillers and Bottlers Private Limited having its distillery at village- Deori, District- Bhojpur, Bihar for transport of ethanol manufactured at the distillery to Indian Oil Corporation Limited situated in the district of Begusarai, Bihar for blending with petrol.

4. The petitioner submits that ethanol is not an ‘intoxicant’ or ‘liquor’. It is industrial alcohol unfit for human consumption and used purely for blending with petrol under the National Biofuel Policy- 2018 of Government of India. On 4th June 2018, the Government of India declared its policy, called- National Policy on Biofuels, 2018 (Annexure ‘P-2’), by which it was decided that the scope of raw material for the procurement of ethanol under Ethanol Blending Program (EBP) will be increased and the policy will allow production of ethanol from molasses, sugarcane juice and from damaged foodgrains like wheat, broken rice, etc. which are unfit for human consumption. The policy also provided that in case of projected over supply of foodgrains as anticipated by the Ministry of Agriculture and Farmers Welfare, the policy will allow conversion of the surplus quantity of foodgrains to ethanol. It was further pointed out by

the petitioner that, the Industries (Development and Regulation) Act, 1951 (IDR Act) was amended by the Industries (Development and Regulation) (Amendment), Act 2016, by which the first schedule of heading 26- Fermentation Industries was substituted by Fermentation Industries (other than potable alcohol).Thus, the Government of India, by virtue of the provisions contained in the said IDR Act, has an exclusive control over industries engaged in manufacture of industrial alcohol.

As a consequence thereof, the Government of India by its letter dated 21.12.2016 (Annexure 'P-3') addressed to all the State Governments referring to the amendment in the IDR Act, 1951 to facilitate easier movement of ethanol, across the country under the Ethanol Blended Program (EBP), directed that restrictions on its movement and on levying of various taxes and duties by the State Government were required to be removed in order to smoothen the entire ethanol supply chain and to encourage industries to produce more ethanol. The Government of India further directed that entire control of Fermentation Industries (other than potable alcohol) including Licensing and Regulation of the manufacture, storage, possession, consumption, use, transportation, trade and commerce, supply, distribution and its inter and intra-state movement shall be under the excessive control of the Government of India. Accordingly, it was directed that field formulations may be suitably instructed to enforce and comply with the said provision. It was further submitted by the petitioner that in view of the directions issued by the Central Government upon amendment in the IDR Act, referring to the letter dated 25.07.2018 of the Petroleum and Natural Gas Department, Government of India admitted that the existing provisions as contained in Section 17 of the Bihar Prohibition and Excise Act, 2016 is not in consonance with the IDR Act, as amended and accordingly it was directed by the Excise Commissioner, Bihar by letter dated 31.07.2018 (Annexure 'P-4') that working distilleries manufacturing ENA and ethanol shall not be required to get its license renewal and no permit or pass shall be issued.

5. It was further contended by the petitioner that since the ethanol is manufactured from damaged foodgrains for blending with petrol in terms of the National Policy on Biofuels, 2018, it contains 99.5% alcohol and is also denatured. It is the purest form of alcohol, is highly volatile, toxic and unfit for human consumption and therefore it falls within the category of

industrial alcohol. The petitioner further submits that the State of Bihar by its notification dated 03.07.2019 (Annexure ‘P-5’), in compliance of the National Policy on Biofuels, 2018, has permitted its manufacturer from grain for supply to oil marketing companies.

6. M/s. Bihar Distillers and Bottlers Private Limited has its factory at village-Deoli, District-Begusarai and is engaged in the manufacture of ethanol used solely for blending with petrol and supplied only to Indian Oil Corporation Limited, Bharat Petroleum Corporation and Hindustan Petroleum Corporation Limited. The petitioner was engaged by M/s. Bihar Distillers and Bottlers Private Limited for transportation of 40000 liters of Denatured Hydrous Ethanol (EMP) to Indian Oil Corporation Limited, P.S. - Barauni Refinery, District-Begusarai. The petitioner is a registered transporter with the Excise and Prohibition Department, Government of Bihar and in terms of the prescribed procedure of the Excise Department, the petitioner by its letter dated 14.11.2023 had submitted a bank guarantee of Rs.3,50,000/- for registration of seven vehicles including the vehicle in question bearing Reg. No. UP-15-FT3741. The said vehicle upon being registered with the Excise Department, a sticker was issued by the Department which was

affixed on the vehicle. Upon registration of the vehicle with the department, the petitioner was entitled to transport ethanol within the State of Bihar. The petitioner also submits that as owner of the tanker in question he had supplied its vehicle to HMG Bulk Carriers (Rajneesh Jain) which is a sister concern of the petitioner and the said transporter had been authorized by M/s. Bihar Distillers and Bottlers Private Limited under a contract dated 11.01.2022 (Annexure 'P-11') for transport of ethanol from distillery to various places in the State of Bihar as also outside the State of Bihar.

7. It was further submitted that M/s. Indian Oil Corporation had issued a Purchase Order No. 70475753 dated 04.11.2024 (Annexure 'P-12') in favour of M/s. Bihar Distillers and Bottlers Private Limited for supply of ethanol. In order to carry out the purchase order, M/s. Bihar Distillers and Bottlers Private Limited engaged the petitioner for transportation of 40000 liters of ethanol to Indian Oil Corporation Limited, Begusarai. Accordingly, the samples of ethanol upon being tested at the laboratory of Bihar Prohibition and Excise Department on 30.11.2024 confirmed that the strength of ethanol was found to be 99.6% and was Denatured. After the samples were tested and certified to be ethanol, it was loaded on

the tanker of petitioner bearing Reg. No. UP-15-FT3741, it was weighed, invoice, e-way bill dated 02.12.2024 was generated and the vehicle was digitally locked on 02.12.2024 at 16:24 hours by the agency of the government, namely- TraQpro. The name of the driver, his credentials and the route were also mentioned accompanying the vehicle. Copies of the chemist report, invoices/e-way bill, weighing slip and digital lock receipt were brought on record by way of Annexure 'P-6' Series.

8. It was submitted that the assignment was being transported in strict compliance of the instructions issued by the Excise Department, Government of Bihar from time to time (Annexure 'P-7' Series).

9. The tanker started its onward journey at around 5:00 am on 03.12.2024. While the tanker was in transit with the digital lock and GPS of the vehicle being affixed on the tanker, it was all of a sudden intercepted by the police officials of Fulwariya Police Station, District-Begusarai at around 7:00 PM, when it was approximately only 12 kilometers away from its final destination i.e. Indian Oil Corporation Limited, Begusarai and making an allegation that the driver had intended to unload ethanol loaded in the tanker, the police arbitrarily seized the tanker containing 40000 liters ethanol and lodged Fulwariya

Police Station Case No.212/ 2014 dated 04.12.2024, instituted under Sections 30(a), 32(2) (3), 33, 36, 41(1), 41(2) of the Bihar Prohibition and Excise Act, 2016. The entire quantity of 40000 liters of ethanol was found to be loaded at the time of seizure. It was therefore submitted by the learned Counsel for the petitioner that the consignment of ethanol could not have been seized by the police alleging violation of the Prohibition Act as it was a raw material/chemical for blending with petrol. Police officials had absolutely no jurisdiction to seize the consignment of ethanol, which was/is neither an ‘intoxicant’ nor ‘liquor’ and thus the provision of Section 30(a) of the Bihar Prohibition and Excise Act had/has no application. It was also submitted by the learned Counsel for the petitioner that the entire seizure made by the police officials was unauthorized and illegal. Secondly, the allegation that several jerry cans containing alcohol was found is totally mischievous inasmuch as the petitioner had nothing to do or no relation with the seizure of the said quantity of ethanol. In fact, if the allegation had any truth, then ethanol could not have been unloaded without tampering with the digital lock. The digital lock report reveals that after the digital lock was affixed on the tanker on 02.12.2024 at 16:24 hours, it was locked till 7:00 PM.

10. It was further submitted by the learned Counsel for the petitioner that the consignment was being lawfully transported from the distillery on the strength of valid statutory documents, already brought on record and this position is not disputed by the respondents. In such view of the matter, as per the petitioner no offence was/is made out either under the provisions of the Bihar Prohibition and Excise Act or the Rules framed there under and therefore there was no occasion for the authorities to seize the consignment. The impugned action in seizing the consignment is highly excessive and a classic case of highhandedness and arbitrary action on part of the police/Law Enforcement Authorities. The seizure of the consignment has been done in a mechanical manner without any application of mind. Even otherwise the owners/ transporters of the tanker not being involved in any manner in the alleged incident, vicarious liability could not have been fastened upon the transporter and as such, the tanker was not liable to be confiscated under Section 56 of the Act. The petitioner further submits that the petitioner has apprehension that the ethanol stored in the tanker may be drained out/ destroyed by the authorities and hence the petitioner being aggrieved by the illegal seizure of the tanker containing 40000 liters of ethanol has filed the present writ

application praying for the following reliefs:

> *"(i) Issuance of writ of mandamus, directing the respondents to forthwith release tanker bearing registration no. UP15FT3741 along with 40,000 litres of Ethanol, which has been seized in connection with Phulwaria P.S. Case No. 212 of 2024 dated 04.12.2024, instituted under Section 30(a), 32(2) (3), 33, 36, 41(1)41(2) of the Bihar Prohibition and Excise Act, 2016, which was lawfully being transported to Indian Oil Corporation, Barauni Refinery, District-Begusarai, on the strength of valid documents/ permits;*
>
> *(ii) To restrain the respondents from destruction of 40000 litres of Ethanol stored in the tanker, which has been seized in connection with Phulwaria P.S. Case No.212 of 2024 dated 04.12.2024 as the consignment was lawfully being transported to Indian Oil Corporation, Barauni Refinery, District-Begusarai, on the strength of valid documents/ permits.*
>
> *(iii) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."*

11. *Per Contra*, the respondents in their Counter

affidavit have stated that the Sub-Inspector of Police, namely-Diwakar Prasad Singh of Fulwariya Police Station got secret information that one tanker was parked in the campus of Manimala Devi, w/o Rajan Singh, situated south of KBI Chimni Bhattha at NH-28 and ethanol/spirit was being taken out from the tanker in question. The SHO alongwith raiding party reached at the spot and found that the main gate of the campus was closed but small gate was open and as soon as the police party entered into the campus, the persons who were present at that place fled away by jumping the boundary wall of the campus, The S.I./I.O. allegedly found that one head of a pipe was connected to the tanker and another head of the pipe was attached to the drum. A motor was also kept under the tanker. There upon it is stated that S.I./I.O. informed the Excise Department and on information the Excise Superintendent, Begusarai and SHO of Excise Police Station reached at the place and confirmed that the tanker was containing ethanol/spirit which was also used in manufacturing liquor. It is further submitted that the SHO prepared the seizure list at the spot and came to Police Station with all seized articles and registered an FIR bearing Fulwariya Police Station Case No.212/2014 dated 04.12.2024 (Annexure ‘A’ Series to the

Counter affidavit filed by the State). It is also alleged and stated in the Counter affidavit filed by the Respondents that the SHO of Fulwariya Police Station after secret information found that ethanol loaded in the tanker in question was being unloaded at another place, other than its destination point, as such ethanol with tanker was seized. Based on these contentions, it was assumed that the ethanol was being unloaded to be used for the purpose of manufacturing liquor. This assumption/ suspicion is reflected from the statement *"..... Hence it seems that this ethanol was being unloaded to use for the purpose of manufacturing liquor"* as averred in paragraph 9 of the Counter affidavit.

12. In reply to Counter affidavit filed by the respondents, the petitioner filed a rejoinder reiterating the fact that the prerequisites for initiating confiscation of vehicles given under Bihar Prohibition and Excise Act was never fulfilled and since no offence had been committed under the Bihar Prohibition and Excise Act, the petitioner was entitled for unconditional release of tanker. The petitioner further submitted that the digital locker affixed on the tanker was intact at the time of seizure and therefore the allegation that ethanol was being taken out from the tanker was totally incorrect and misleading.

It was further submitted that the tanker was containing 40000 liters of ethanol/spirit when it started and at the time of seizure also it was 40000 liters of ethanol, as per the seizure list. If any amount of ethanol/spirit had been taken out then the quantity seized from the tanker would have been less than 40000 liters. The petitioner also denied the contention of the respondents that the ethanol was being unloaded at another place and not at its destination point, as there was no material available on record to show that the tanker was transporting ethanol/spirit for any other place other than its destination. The petitioner also submitted that the petitioner had already produced sufficient materials before this Court to substantiate that the petitioner was transporting ethanol which is Denatured and Hydrous Ethanol (EMP) for supply to Indian Oil Corporation Limited, P.S.-Barauni Refinery, District-Begusarai for blending with petrol, which is a lawful activity and not control by the Bihar Prohibition and Excise Act, 2016.

13. On a careful consideration of the pleadings and contentions made by the parties and of all the materials brought on record from both the sides, this court finds that the respondents have not disputed or contested the following factual submissions made on behalf of the petitioner and hence they are

being enlisted below as admitted facts:

a. **Ethanol which was being transported in the tanker was legally manufactured by M/s. Bihar Distillers and Bottlers Private Limited and the same was being transported in terms of the National Policy on Biofuels, 2018 read with Government of Bihar's notification dated 03.07.2019.**
b. **Ethanol in the tanker was manufactured from damaged foodgrains for blending with petrol and it contained 99.5% alcohol and was Denatured, thus unfit for human consumption. The ethanol therefore fell in the category of industrial alcohol.**
c. **The petitioner was/is a registered transporter with the Excise and Prohibition Department, Government of Bihar and in the terms of the prescribed procedure of the Excise Department, the petitioner by letter dated 14.11.2023 had submitted a bank guarantee of Rs.3,50,000/- for registration of seven vehicles including the vehicle/tanker in question bearing Reg. No. UP-15-FT3741. The said tanker upon being registered with the Excise Department was given a sticker by the Department which was affixed on the vehicle.**
d. **Upon registration of the vehicle/tanker in question with the Excise Department, the**

petitioner was entitled to transport the ethanol within the State of Bihar.

e. **The ethanol was loaded in the tanker and was being transported from the premises of M/s. Bihar Distillers and Bottlers Private Limited to the premises of M/s. Indian Oil Corporation Limited, situated in the District of Begusarai in order to carry out the Purchase Order No. 70475753 dated 04.11.2024.**

f. **The ethanol in question before being loaded and transported, was tested and certified at the laboratory of Bihar Prohibition and Excise Department on 30.11.2024 which had confirmed the strength of ethanol to be 99.6% and of it being Denatured. At the time of being loaded on the tanker, the ethanol was weighed and found to be 40000 liters, invoice and e-way bill dated 02.12.2024 was generated and the vehicle was digitally locked on 02.12.2024 at 16:24 hours by the Agency of the Government. The name of the driver, his credentials and the route were also mentioned accompanying the vehicle. Copies of the chemist report, invoices, e-way bill, weighing slip and digital lock receipt were all present with the vehicles. Thus, the petitioner transporter was having all the required documents which was/is statutorily required by law. This fact is also supported by the**

observation/noting made in the 'Details of items Seized' contained in the 'Search and Seizure Memo' at serial no. (20), which reads as follows:

> **"(20). एक काला रंग का बैग जो टैंकर गाड़ी के केबिन में मिला उस बैग में कॉलम नंबर 01 में वर्णित गाड़ी का दस्तावेज (RC, पॉल्यूशन, बीमा, इत्यादि) तथा Bihar Distillers & Bottlers Pvt Ltd का Tax Invoice, Authorisation Letter, Certificate, e-way bill, Excise Officer Incharge Garhani (Bhojpur) Ara का सर्टिफिकेट, Bottlers Pvt Ltd का Authorisation letter, Lab Report, Certificate of Analysis मद्द निषेध उत्पाद एवं निबंधन विभाग का अनापत्ति प्रमाण-पत्र, सत्यापन प्रमाण-पत्र, HMG Bulk Carriers (Rajneesh Jain) का लेटर पैड पर बिल्टी।"**

g. At the time of seizure, the tanker/vehicle in question was only 12 kilometers away from its final destination i.e. Indian Oil Corporation Limited, Begusarai and neither the digital lock was found tampered nor there was any reduction in the quantity of ethanol inside the tanker. The noting/ observation made in Serial no. (1) of the 'Details of items Seized' given in the 'Search and Seizure Memo' also supports the fact that at the time of seizure the tanker was carrying 40000 liters of ethanol. Serial no. (1) of 'Search and Seizure Memo' reads as follows:

> **“(1) एक काला रंग का टैंकर जिसका रजि० न० UP15FT 3741 में भरा हुआ Ethanol जैसा तरल पदार्थ जिसमें करीब 40000 (चालीस हजार) Liters जिसके टंकी पर HMG Bulk Carriers अंकित चेचिस न० MAT820006MIP2682 इंजन न० B67B6A250D02112L64179203.”**

Considering the above admitted factual position coupled with the fact that nothing has been brought on record by the respondents or even contended in their Counter affidavit that the original digital lock affixed on the tanker was found to be tampered at the time when it was intercepted by the police, the allegation of the respondents that the petitioner was taking out the ethanol from the tanker falls flat. Had the digital lock affixed on the tanker been tampered by the petitioner, a noting/observation to this effect would have been there in the ‘Search and Seizure Memo’. It is also important to observe that nothing has been brought n record by the respondents to even *primafacie* establish the allegations leveled in the F.I.R. Moreover the quantity of ethanol was intact intact at the time of seizure. Therefore, question of unloading of ethanol is factually incorrect.

14. The above findings and observations conclusively lead us to hold that the consignment was being lawfully transported from the distillery on the strength of valid statutory

documents and there was no occasion for the authorities to seize the assignment alleging violation of the provisions of Bihar Prohibition & Excise Act or the Rules framed thereunder. This is a classic case of highhandedness and arbitrary action on part of the authorities.

15. The justification rendered by the authorities that they acted in the manner as they did, based on some secret information received from someone (unknown) that the ethanol loaded in the tanker in question was being unloaded at another place other than its destination point, manifestly appears to be a smokescreen created for covering up the action of highhandedness indulged into by the authorities. There was absolutely no justification for the authorities to seize the tanker in question along with 40000 liters of ethanol, which was being legally transported (along with all statutory documents) to its final destination point i.e. Indian Oil Corporation Limited, Begusarai. The action of the authorities is baffling to say the least.

16. Under the aforesaid facts and circumstances, the present writ application is allowed directing the respondents to forthwith release the tanker bearing Reg. No. UP-15-FT3741 along with 40000 liters of ethanol. Needless to emphasize that

the manner in which the authorities have acted in this case has eroded public confidence in law enforcement and has also weakened the rule of law. In such circumstances, we further consider it appropriate to direct the respondent State Government to initiate a disciplinary enquiry into this matter for finding out who are the persons/officials responsible for acting unjustly, unfairly, arbitrarily, and in a high handed manner and thereafter take action against such erring persons/officers, in accordance with law.

17. With the above observations and directions, the present writ application is allowed with cost of Rs.2,00,000/- (Two Lakhs), out of Rs.2,00,000/- (Two Lakhs), Rs.1,00,000/- (one lakh) be paid to the petitioner and the cost of Rs.1,00,000/- shall be remitted in the Lawyers Association Welfare Benevolent Fund, Indian Bank, Branch LNMI, Bailey Road, Patna, IFSC Code No.IDIB000L501 having Bank Account No.7801893276 within a period of eight weeks from today. Respondents are at liberty to recover the cost from the erring officials, after subjecting them for disciplinary proceedings, strictly in terms of relevant rules/regularization. In this regard report shall be submitted within a period of six months from the date of receipt of this order.

18. For compliance list the matter on 10.11.2025.

19. All the pending Interlocutory applications, if any, also stand disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	09.04.2025
Uploading Date	25.04.2025
Transmission Date	N/A