

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18571 of 2024

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Shailesh Kumar S/o- Late Harendra Ray, Resident of Village- Santha, P.S.-
Awatar Nagar, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Additional Chief Secretary to the Govt. of Bihar, Prohibition Excise and Registration Department, Patna.
3. Collector, District- Saran, Chapra.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ebrahim Kabir, Advocate Ms. Shruti Sinha, Advocate
For the State	:	Mr. S D Sanjay, Advocate General Ms. Priya Gupta, AC to AG Mr. Shaswat Agarwal, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE KUMAR MANISH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 09-07-2026 Heard learned counsel for the petitioner and learned

AG for the State of Bihar.

2. This writ application has been preferred seeking the

following reliefs:

“1. That this is an application for issuance of an appropriate writ order or direction for quashing new rule-12 A (1), 12 A (3), 12 A (4), 12 A (5) inserted after rule-12 of Bihar Prohibition and Excise Rules 2021 vide the Bihar Prohibition and Excise (Amendment) Rule-2022 notification contained in memo no-11/Utpadniti-01-03/2021 2458 Patna dated 05-04-2022 issued by Additional Chief Secretary Govt. of Bihar Prohibition, Excise and Registration Department Bihar Patna as the same is arbitrary discriminatory and ultravirous to article-14,



19(g) and 21 the Constitution i.e. Annexure-3 and also for quashing notification No.- 11/Utpadniti-01-03/2021/3671 dated 31-05-2023 Annexure-4, whereby The Bihar Prohibition and Excise (Amendment) Rules 2023 has been issued where in substitution of Sub-Rule (2) of the 12 A of Bihar Prohibition and Excise Rules 2021 has been made with the following (2) the amount of penalty shall be as decided by the Collector or the Officer authorized by him, while imposing the penalty he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle, in no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs.-5 Lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer. In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction as the same is illegal arbitrary and ultravires to Article 14. 19 and 21 of The Constitution and also for further direction to released the truck of the petitioner namely BR01GM-8943 without any penalty which has been seized by the respondent in Parsa PS Case No.-23/24 dated 20-01-2024 under section 30(a) of Bihar Prohibition and Excise Act 2022 without any penalty or for any other order or orders which this Hon'ble may deem fit and proper under the circumstances of this case.”



3. At the outset, learned counsel for the petitioner submits that he would not press the prayer challenging the new Rules 12A(1), 12A(3), 12A(4), 12A(5) inserted after Rule 12 of Bihar Prohibition and Excise Rules, 2021(as amended up to date) (hereinafter referred to as the 'Rules of 2021').

4. In the aforesaid view of the matter, challenge to those provisions of the Rules is not pressed.

5. Learned counsel for the petitioner submits that he is only interested in getting release of the truck in accordance with law.

6. We find from the supplementary affidavit filed on behalf of the petitioner that the vehicle in question was subject matter of confiscation in Confiscation Case No. 142 of 2024. From Annexure 'P-5' to the supplementary affidavit, it would further appear that order of confiscation has been passed and the vehicle has been ordered to be auction sold. Three dates for auction sale were also notified.

7. Learned counsel for the petitioner submits that the auction sale has yet not taken place. It is also an admitted position that the order of confiscation is an appealable order but no appeal has been preferred till date.

8. Learned AG for the State of Bihar submits that in



such circumstance, the petitioner is required to first come out of the order of confiscation, then only there will be any question of release of the vehicle.

9. We find force in the submission of learned AG for the State. From Annexure 'P-5' to the supplementary affidavit of the petitioner, it is evident that the truck in question has already been confiscated. The order of confiscation is an appealable order under Section 92 of the Bihar Prohibition and Excise Act, 2016 (as amended up to date), before the competent authority. Further, we find that the Explanation to Rule 12A of the Rules of 2021 reads as under:-

"12A. Release of Vehicles, Conveyance etc. on Payment of Penalty.-

Explanation.- In all pending/ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released."

10. If the vehicle in question has yet not been auction sold, the petitioner may, if so advised, file an appropriate application before the Collector or the authorized Officer in terms of the Explanation to Rule 12A as early as possible and preferably within a period of four weeks from today. If such an



application is preferred, the same will be considered by the competent authority/authorized officer, as the case may be, in accordance with law and an appropriate order thereon shall be passed within one month from the date of filing of the application.

11. Since Explanation to Rule 12A itself provides that this remedy is available if the auction has yet not taken place, there will be no question of limitation if the auction has not taken place.

12. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

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