(2019) 05 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10439 Of 2019

Cti Infrastructure Private Limited APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors RESPONDENT

Date of Decision : 21-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(d), 19(1)(g), 226, 301, 302, 304(b)
Bihar Prohibition And Excise Act, 2016 — Section 2(50), 14, 14(4), 15, 16, 30, 30(a), 97

Citation : (2019) 05 PAT CK 0076

Hon'ble Judges : Jyoti Saran, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Satyabir Bharti, Alok Chandra, Lalit Kishore, Vikash Kumar, Akash Chaturvedi

Final Decision : Allowed

Judgement

The petitioner by filing this writ petition under Article 226 of the Constitution of India prays for the following reliefs:

(i) Issuance of writ of mandamus, directing the respondents to forthwith release 300 cases of beer, (220 cases of Kalyani Black Label Strong Beer-500 ml Can and 80 cases of Kingfisher Extra Strong Premium Beer- 500 ml Can) owned by M/s United Breweries Ltd., which has been seized in connection with Kishanganj P.S.Case No. 85 of 2019 dated 15.2.2019, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, which was being lawfully transported on the strength of valid statutory documents/ permits issued by the West Bengal Excise Department from Celebrity Breweries Pvt. Ltd, Mauza- AIMA and Somsar, P.S. Dadpur, Hooghly, West Bengal, West Bengal to BEVCO Warehouse of the West Bengal State Beverage Corporation Limited, at Siliguri, District Darjeeling.

(ii) To restrain the respondents from initiating any proceeding for confiscation of the aforesaid consignment of beer, seized in connection with Kishanganj P.S.Case No. 89 of 2019 dated 15.2.2019, as the consignment was lawfully transported from Celebrity Breweries Pvt. Ltd., Mauza- AIMA and Somsar, P.S. Dadpur, Hooghly, West Bengal to BEVCO Warehouse of the West Bengal State Beverage Corporation Limited, Siliguri, District West Bengal.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission on completion of pleadings.

The facts of the case briefly stated is that the petitioner is a Company incorporated under the Companies Act, 1956 having its registered office at 50, Chowringhee Road, ISSCO House, Block B, 10th Floor, Kolkata. The petitioner is engaged in the business of providing transportation services to its clients and during which course it transports different goods to different parts of the Country. The case of the petitioner is that it is in one such course of transportation that the petitioner entered into an agreement with the United Breweries Limited for transportation of its goods/ beer through the designated routes as indicated in the transport permits. A copy of the agreement is enclosed at Annexure 1 to the writ petition. It is the case of the petitioner that it is based on such agreement that the petitioner had hired a Tata 407 vehicle bearing registration No. WB 89/0104 for transportation of 300 cases of beer (220 cases of Kalyani Black Label Strong Beer and 80 cases of Kingfisher Extra Strong Premium Beer, each packed in 500 ml. Can). The beer owned by M/s United Breweries Ltd. was manufactured at the contract brewery namely M/s Celebrity Breweries Pvt. Ltd., Mauza AIMA and Somsar, P.S. Dadpur, Hooghly, in the State of West Bengal and was to be transported to BEVCO Warehouse of the West Bengal State Beverage Corporation Limited, Siliguri, West Bengal.

It is the case of the petitioner that the vehicle carrying beer duly supported with lawful and valid documents issued by the West Bengal State Beverages Corporation Limited (hereinafter referred to as 'the Beverages Corporation') at Annexure 2 series was on its way to its destination at Siliguri on 13.2.2019 following designated route through Memari, Morgram, Malda and Siliguri passing through Dalkola and Kishanganj on the National Highway and no sooner it entered the check-post at Kishanganj in the State of Bihar that it was stopped, the vehicle together with the goods loaded thereon seized, a police case registered giving rise to Kishanganj P.S.Case No. 85/2019 for alleged violation of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act') and the driver and Cleaner made accused for such violation. A copy of the F.I.R. is at Annexure 4.

The petitioner after representing before the District Magistrate, Kishanganj on 22.2.2019 with reminders on 25.2.2019 and 15.3.2019 and getting no response has approached this Court through the writ petition in question for the reliefs as reproduced hereinabove.

Mr. Satyabir Bharti, learned counsel has appeared for the petitioner while the State in its Excise Department is represented through Mr. Lalit Kishore, learned Advocate General assisted by Mr. Vikash Kumar, learned SC-11.

Mr. Bharti, learned counsel for the petitioner, while reiterating the facts of the case has straightway invited the attention of this Court to the documents which accompanied the transportation, copies of which are enclosed at Annexures 2 series, to submit that the goods transported is supported by the 'order for supply' issued by the West Bengal State Beverages Corporation Limited at running Page-33. In reference to the transport pass at page-34, he submits that it clearly mentions the details of the goods transported from Celebrity Breweries Pvt. Ltd. to the Warehouse of the Beverages Corporation, the details of the vehicle and the route which the vehicle was to follow. He submits that the invoice at page-35, the consignment note at page-37 all of which was produced at the check-post, but simply because a digital lock was not installed on the vehicle and the driver failed to show any paper supporting grant of permission for transportation of the goods through the State of Bihar, that the vehicle was seized together with goods and the F.I.R. instituted.

Learned Counsel has referred to the F.I.R. at Annexure 4 to submit that except for the allegation of non-installation of digital lock and permission taken for entering the State of Bihar, there is no other allegation against the petitioner of any other violation. He submits that it is on mere suspicion that the seizure has taken place.

Learned counsel has invited the attention of this Court to the statement made in paragraphs 7 and 8 of the counter affidavit filed on behalf of the Principal Secretary and the Excise Commissioner to submit that except for the said charge there is no other allegation of violation against the petitioner. Learned counsel in reference to a map at running page-38 submits that it is in between Malda and Siliguri while moving on NH27 which was earlier NH31 that the National Highway crosses over to the district of Kishanganj in the State of Bihar and it is for this cross over that the petitioner has been penalized despite supporting documents produced on a valid transportation. Mr. Bharti has submitted that except for the National Highway in question through which the goods were being transported, there is no other route which could have been followed by the consignment. He submits that it is right at the check-post that true and proper disclosure was made by the driver which is also recorded in the F.I.R. yet the vehicle was seized. According to Mr. Bharti, in case the petitioner had to comply with any formality, it was the duty of the Excise Officials posted at the check-post to allow him to do the needful including installation of the digital lock and consequently give a safe passage to the vehicle rather than seizing the vehicle on a complete misapplication of the law.

In reference to the statement made in paragraph 7 of the counter affidavit of the Principal Secretary and the Excise Commissioner he submits that even while accepting that Rampur Khagda check post has the facility of installing digital locks which has to be removed at Faring Gola check-post at Kishanganj before the vehicle leaves the State territory but since the officials posted at the entry check-post at Rampur Khagda failed to discharge their obligation of installing such lock that the petitioner is being penalized.

Learned counsel has referred to the certification by the West Bengal Government at Annexure 5 to submit that it certifies the transportation.

Learned counsel has next referred to the notification relied upon by the respondent Excise Department to support the seizure dated 28.12.2015 which introduced the New Excise Policy in the State, at Annexure-A to the counter affidavit to submit that while Clause 1(kha) saves the business in IMFL, Clause 2(gha)(v) conceptualized an arrangement of installation of digital lock but no followup action has been taken for framing of Rule or issuance of instruction as to how this policy decision is to be given effect to in the manner provided in Clause 5 and 6.

Learned counsel has next referred to the definition of the 'notification' provided in Section 2(50) of 'the Act' to submit that it is only a notification issued under 'the Act' which is published in the Official Gazette which has been treated a valid notification.

Mr. Bharti while referring to the saving clause at Section 97 of 'the Act' submits that though notifications issued under the Bihar Excise Act, 1915 and the other legislation in force at the relevant time have been saved but the said provisions yet does not come to the aid of the respondents because the New Excise Policy, 2015, simply enabled the State to take necessary steps for regulating trade after obtaining sanction from the Committee constituted but in absence of any followup action taken by the State, the reliance on the said policy would be completely misplaced.

Learned counsel has next referred to Section 14 which provides for movement of intoxicants under valid permit and after obtaining transit permission in the prescribed manner to submit, that in absence of Rules framed to give effect to the provision underlying Section 14, it is unworkable as held by this Court in the judgment rendered in the case of Mahadev Carrier Pvt. Ltd. vs. the State of Bihar & ors. arising from C.W.J.C.No. 2866/2019.

Learned counsel has also invited the attention to the provisions underlying Sections 15 and 16 of 'the Act' to submit that they enable the State Government to lay down reasonable restrictions and exercise regulatory powers but which again is unworkable because neither any Rule has been framed nor any notification has been issued until date, to give effect to these provisions.

It is thus submitted that the action of the respondents in seizing the vehicle and in keeping it in continued detention is wholly illegal and contrary to the constitutional guarantee available to the petitioner.

Per contra, Mr. Lalit Kishore, learned Advocate General, has relied upon the provisions of 'the Act' as well as provisions of the New Excise Policy at Annexure 'A' to defend the impugned action and to submit that since there is no dispute that the petitioner was travelling without valid permit and had avoided installation of digital lock, an offence had been committed under 'the Act' and the petitioner would have to suffer the consequences. Learned Advocate General has referred to the New Excise Policy, 2015 at Annexure 'A' to submit that at Clause 2(gha) obliged every transporter of liquor to install a digital lock at the time of entry as well as to obtain permission for passing through the State of Bihar but the petitioner has failed on each of the two obligations. Learned Advocate General has referred to the consignment note/ transport pass at running page-34 of Annexure 2 series to submit that even though the route was clearly mentioned and at no place there is any reference to the district of Kishanganj or that the truck would be passing through the State of Bihar, the petitioner is guilty of violation of the route. It is further urged that even in case the consignment crossed over to the State of Bihar at Kishanganj, then the law obliged him to obtain permission and get a digital lock installed, which obligation was not carried out.

In response to the reliance made by Mr. Bharti to the judgment of Mahadev Carrier Pvt. Ltd. (supra) he submits that several aspects were not placed before the Court viz the New Excise Policy at Annexure 'A' which obliges the transporter to get a digital lock installed. According to the learned Advocate General, even if the Rules have not been framed as yet, the New Excise Policy, 2015 which is in tune with the provisions present at Sections 14 to 16 of 'the Act', amply empowers the State Government to regulate the movement of intoxicants within the State. By producing another map it is canvassed that there was an alternative route available with the petitioner and he has violated the same to cross over in the State of Bihar and since the law of prohibition is in force, the petitioner would have to face the consequences.

Learned Advocate General in his attempt to distinguish the present case from the case of Mahadev Carrier Pvt. Ltd. (supra) has submitted that while in the said case the truck was installed with GPS tracking Data which gives the details, there is no such equipment installed in the present case.

Learned Advocate General by placing reliance on the judgment of this Court in C.W.J.C.No. 6944/2018 (Tirupati Logistics Private Limited vs. the State of Bihar & ors.) has submitted that on a similar issue coming for consideration, the Division Bench presided by Hon'ble the Chief Justice relegated the matter to the Excise Commissioner for its disposal within a time frame. Learned Advocate General defending the impugned action under the regulatory power vested in the State in Sections 14, 15 and 16 of 'the Act' read alongside New Excise Policy, 2015 has submitted that there is no illegality in the action complained.

In his short rejoinder Mr. Bharti has produced the order of the Excise Commissioner passed in Appeal Case No. 36/2018 (M/s Tirupati Logistics Pvt. Ltd. vs. the Collector, Kishanganj & ors.) to submit that the learned Advocate General has placed only part information in the case of Tirupati Logistics Pvt. Ltd. (supra) where the matter was relegated to the Excise Commissioner. He submits that the fact is that on such relegation, on identical issue arising where the consignment had crossed over to Kishanganj, while travelling to Siliguri, the Excise Commissioner vide his order dated 21.5.2018 has directed the Excise Superintendent, Kishanganj to verify the documents of consignment and in case they were found to be genuine, to release the same within a period of seven days in favour of the said petitioner.

He thus submits that the Excise Commissioner while considering the identical case of Tirupati Logistics (supra) relied upon by learned Advocate General has concluded in favour of the petitioner but has taken a different stand in so far as the present case is concerned even when, in each of the two cases the issue related to transportation of liquor of West Bengal Beverages Corporation and the destination was Siliguri routed through the district of Kishanganj in the State of Bihar. It is the submission of Mr. Bharti that an arbitrary stand has been taken by the Excise Commissioner in the present counter affidavit which is in contrast to his direction issued in the case of Tirupati Logistics Pvt. Ltd. (supra).

We have heard learned counsel for the parties and have perused the records.

This matter came up for consideration on 7.5.2019 and this Court taking note of the situation, allowed the respondents including the District Magistrate, Kishanganj i.e. respondents no. 1 to 3, to take a prudent and correctional course in view of the judgment rendered by us in the case of Mahadev Carrier Pvt. Ltd. (supra) on a similar matter but such was not to be. For the sake of convenience we are persuaded to reproduce our expression in the said case which practically answers the issue:

"The impugned seizure has been carried out in purported exercise of powers so vested in the law enforcing agencies within the State of Bihar under the provisions of 'the Act' which under section 14 of 'the Act' restricts movement of intoxicants except under a valid permit or after obtaining transit permission and in section 30(a) imposes a penalty for any such unlawful import, export, transport, manufacture, possession, sale of intoxicants or liquor etc.

Though heavy reliance was placed by Mr. Vivek Prasad, learned Government Pleader No.7 on the provisions of section 14 of 'the Act' to defend the impugned action and to submit that the movement of any intoxicants can only be through a valid permit or under transit permission obtained from the prescribed authority, to a query made by the Court as to whether 'the Act' provides for any statutory permit or whether the Rules as mandated under section 14(4) have yet been framed by the State Government, Mr. Prasad has no answer because though 'the Act' was brought into force with effect from 02.10.2016 yet the statutory rules have yet not been framed.

On a pointed query to Mr. Prasad as to what ought to be the proper course for the law enforcing agencies in the State of Bihar in case a transporter, in course of transportation of liquor on strength of valid travel documents, within the territory of a State where no Prohibition Law is in force like in the present case the State of Jharkhand, mistakenly treads over the territory of the State of Bihar where the

Prohibition Law is in force and the vehicle driver is possessed with documents to support a lawful transportation of the goods, whether the authorities of the State of Bihar should have assisted to put the vehicle back to its normal course i.e. to return to the State of Jharkhand and/or to direct the driver to obtain permission from the competent authority or should have hurriedly proceeded for seizure, as done in the present case, no satisfactory answer could come forth.

In our opinion, the documents at Annexure 2 series are sufficient indication of a valid transportation of goods under the dispatch note issued by the Jharkhand State Beverages Corporation Limited from Ranchi to Deoghar, within the State of Jharkhand. The GPS tracking data at Annexure 4 very clearly confirms that the vehicle all along travelled within the State of Jharkhand and just before reaching Deoghar that it must have mistakenly crossed over to Chandramandi in the district of Jamui within the State of Bihar and having realised the mistake the driver tried to return to the State of Jharkhand when the police authorities intercepted the vehicle and took it into their custody.

While the FIR at Annexure 3 very fairly acknowledges that the driver of the vehicle did inform the Station House Officer that the goods were being transported from Ranchi to Deoghar, there is no such mention in the FIR, either that the goods were being transported without valid documents or that the driver failed to produce the same. In fact, this lacuna is sought to be filled up through the counter affidavit when the Dy. Superintendent of Police, Jamui filing the affidavit under the authority of the Superintendent of Police, Jamui has tried to plug the loopholes to say that the driver failed to produce the documents. This statement again falls by the acknowledgment in paragraph 7 of the counter affidavit where the deponent accepts that somebody came with valid permit as regarding the transportation in question on 27.12.2018. It reflects plain abuse of statutory power that even when the respondents acknowledge that on 27.12.2018 some one produced the valid permits to support the transportation yet, neither the police authorities in the district of Jamui nor the prescribed authority under 'the Act' bothered to release the vehicle with the goods rather perpetuated the illegality to keep the truck in illegal seizure and relegated the driver of the vehicle to illegal custody.

Article 301 of the Constitution of India guarantees freedom of trade, commerce and intercourse throughout the territory of India. Though powers have been vested in the Parliament under Article 302 to impose reasonable restrictions and Article 304(b), inter alia, enables a Legislature of a State by law, to impose such reasonable restrictions on the freedom of trade, commerce or intercourse as may be required in public interest but then such restrictions have to be subject to the guarantee available under Article 301 of the Constitution of India.

No doubt, with effect from the date, the Prohibition Law was brought into force within the State of Bihar, none was permitted to import, export, transport, consume any intoxicant/liquor except under a valid permit but the case in hand is not a case where the consignment in question was being brought into the

State of Bihar rather the consignment started its course at Ranchi within the State of Jharkhand and was meant to be delivered at the Warehouse of the Jharkhand State Beverages Corporation Limited, Deoghar which again fell in the State of Jharkhand. There was thus no occasion for the consigner to obtain any valid permit from the excise authorities of the State of Bihar nor even if the truck crossed over to the territory of Bihar, could the Excise Department coerce the consigner to obtain a valid permit once it got confirmed from the travelling documents that the consignment was travelling under a statutory permit issued by the Government Corporation in the State of Jharkhand and was meant to be delivered at the Warehouse of the Jharkhand State Beverages Corporation Limited, Deoghar. This position is also admitted by Mr. Arup Kumar Chongar, learned counsel representing the State of Jharkhand as well as the Jharkhand State Beverages Corporation Limited.

This Court has on numerous occasions commented upon the repeated abuse of the Prohibition Law by the statutory authorities but the case in hand is a classic example where neither the district police authorities of Jamui nor the excise authorities are willing to relent and correct the mistake committed even when valid documents supporting the transportation has been brought to their notice and admitted at paragraph 7 of the counter affidavit. The respondent authorities in the Excise and Prohibition Department, Government of Bihar yet continue to stand by their illegal action as canvased through their counsel Mr. Vivek Prasad.

In our opinion the provisions underlying section 14 of 'the Act', which obliges a transport carrier to obtain a valid permit from excise authority, much relied upon by Mr. Prasad, is unworkable because no Rules have yet been framed to prescribe the procedure nor any form is prescribed to make the provisions effective. In such situation, the reliance by Mr. Prasad, learned Government Pleader No.7 on section 14 was completely misplaced and does not come to the aid of the respondents.

In our opinion, even if the State in its Police Department and the 'Excise Department' have their reasons for suspicion that it was a case of illegal transportation of liquor within the territory of the State of Bihar, once the Station House Officer admits that the driver of the vehicle had informed that the consignment was being transported from Ranchi to Deoghar and the Station House Officer, Chandramandi Police Station, Jamui, does not record any doubt in the statements so made while drawing the FIR, either he should have allowed the vehicle to return to the territory of Jharkhand and/or even if, section 14 of 'the Act' was pressed in service then, he should have allowed sufficient time to the transporter or the consigner as the case may be, to obtain permits for the cross over into the State of Bihar but the district police did neither, rather mechanically proceeded to seize the vehicle along with the goods to register a police case and took the driver into custody.

We are satisfied to record that in view of the documents present at Annexure 2 series read alongside the G.P.S. tracking data present at Annexure 4, the authorities in the 'Excise Department' in the State of Bihar as well as the Jamui District Police should have exercised prudence rather than to mechanically apply the Prohibition Law to seize the goods which was being lawfully transported and which act is in direct conflict with the Constitutional guarantee provided under Article 301 of the Constitution of India and the impugned action does not get saved by the provisions of Article 304(b) in the attending circumstances."

There is absolutely no dispute that the goods in question was travelling with valid documents. The certification by the Government of West Bengal at Annexure 5 further concludes this issue. The F.I.R. at Annexure 4 also does not allege any evasion on the part of the petitioner rather it clearly records that the vehicle in question stopped on indication and informed that the goods were being transported from Hooghly to Siliguri. It also records that on demand the documents supporting transportation was also produced. There is no allegation in the F.I.R. that the driver tried to flee away or that the consignment in question was meant for the State of Bihar or that it was being offloaded in the territory of the State. It is simply because the driver failed to produce any permission granted by the competent authority in the State of Bihar for transportation of intoxicants through the territory of the State of Bihar, no digital lock was installed and since the prohibition law was in force that the driver and the Khalasi were arrested and F.I.R. instituted.

Two sets of counter affidavits have been filed, one at the instance of respondents no. 4 and 5 i.e. the Superintendent of Police, Kishanganj and the Station House Officer of Kishanganj Police Station and the other on behalf of the Principal Secretary of the Excise Department as well as Excise Commissioner. Since each of the two affidavits contains the same stand we would be referring to the counter affidavit filed on behalf of the Excise Department and the statements at paragraphs 7, 8 and 9 would confirm that even when these departmental heads do acknowledge that the digital locks were to be installed when the vehicle was entering the State of Bihar and in the present case when it entered the Rampur Khagda Excise Check Post at Kishanganj where the petitioner was apprehended on NH31 but they put no query on the departmental officials posted at the said Check Post as to why they failed in their duty to install such digital lock on the vehicle.

Paragraph 8 of the counter affidavit comments upon cross over by the vehicle in the State of Bihar at Kishanganj and since the said district is not amongst the stations mentioned in the transport pass, so the consignment after being doubted has been seized but it again fails to either give an alternative possible route for the vehicle or point any provision casting a prohibition for such cross over. In fact what we have decided in the case of Mahadev Carrier Pvt. Ltd. (supra) regarding absence of statutory prescriptions, is admitted at paragraph 9 when the Principal Secretary and the Excise Commissioner do admit that detailed Rules have been contemplated for prescribing procedure for installation of digital locks on tankers and would be brought into force after its approval by the

Cabinet and on lifting of the Model Code of Conduct. Meaning thereby, there is no rule in force and thus the reliance placed by learned Advocate General either on the notification announcing the New Excise Policy, 2015 or on the provisions of Sections 14 to 16 of 'the Act' is completely misplaced. In fact the reliance placed by the learned Advocate General on the New Excise Policy for supporting installation of digital locks fails to cure the situation for two other reasons namely:

(a) Clause 2(gha)(v) of the policy decision is an enabling provision which allows the State to make arrangements for regulating entry of vehicles loaded with liquor/ intoxicants in the State of Bihar, which power has not been given effect to because no rule/ guideline or instruction have yet been issued pursuant to such policy decision; and

(b) A review Committee under the Chairmanship of the Chief Secretary was constituted vide Clause 5 with power vested in the Excise Department under Clause 6 to issue necessary instructions, guidelines and notifications for giving effect to the policy decision after seeking approval from such Committee but again no notification has been issued by the State under such enabling power.

The situation existing as discussed is ample proof of absolute abuse of statutory power on insistence of digital locks even when the Principal Secretary/ Excise Commissioner admit before this Court that statutory rules are in the making for laying procedure for installation of digital locks.

In so far as the other allegation regarding obtaining permission for passing through the territory of State of Bihar is concerned, much reliance has been placed by learned Advocate General on Sections 14 to 16 of 'the Act' in support of the objection taken.

Sections 14 to 16 of 'the Act reads under:

"14. Movement of intoxicants etc.- (1) No liquor, intoxicants or final product shall be imported, exported or transported or transited within or from outside or through the State except with a valid permit and subject to such duty (if any) payable.

(2) If any consignment of liquor or intoxicants is being transported by road from a place outside the State of Bihar to another such place and the vehicle carrying the consignment passes through the territory of the State, the driver or any other person in-charge of the vehicle shall obtain transit permission in the prescribed manner from the authority of the first check post falling enroute after entry into the State and shall surrender the same transit permission to the authority of the last check post before leaving the State and in the event of failure to do so within the stipulated hours of leaving the first check post falling enroute, it shall be deemed that liquor or intoxicants so transported have been sold or disposed off by the owner or the person-in-charge of the vehicle within the State of Bihar.

(3) In case the driver or person referred to in sub-section (2) fails to comply with the provisions of sub-section (2), he may, apart from being levied such penalty as the State Government may decide, also be prosecuted under Section 30 of this Act;

(4) The State Government may make detailed rules for this purpose.

15. Restrictions on vehicles carrying intoxicants etc.- The State Government may lay down reasonable restrictions on the vehicles transporting any excisable articles or final products and may require them to adhere to certain specifications:

Provided further that the State Government may require the transport vehicles to install such devices as it may require as a pre-condition for registration under the Motor Vehicle Act and give such directions to the State Transport Authority as it deems fit.

16. Power to Regulate Transport intoxicants.- Notwithstanding anything contained in the Act or any Act for the time being in force, the State Government may by notification, regulate the movement or import or export of any or all liquor or intoxicant into or from or through the State or any specified part or area of the State."

We have already held that Section 14 is unworkable in absence of any Rules framed by the State in our judgment rendered in the case of Mahadev Carrier Pvt. Ltd. (supra). Even Sections 15 and 16 which enables the State to lay down restrictions or to have regulatory control remain unworkable in absence of corresponding rules, guidelines or notifications issued on the subject by the State Government as mandated under the said provision. It is undisputed that neither any Rules have been framed for regulating the movement of vehicle loaded with intoxicants within the State of Bihar as mandated in Section 14 nor the State Government has issued by notification for restricting movement of intoxicants as mandated in Section 15 nor any notification has been issued to regulate the movement of such intoxicants in terms of Section 16. We have already taken note of the acceptance by the Excise Department at paragraph 9 where they admit that the Rules contemplated for regulating the procedure for installation of digital locks are yet awaiting approval by the Cabinet.

We completely fail to appreciate that in situation of the present kind where the legislation having been enacted the regulatory controls are yet to be given effect to in absence of corresponding Rules, notifications or guidelines issued by the State, how learned Advocate General has tried hard to defend an absolute defenceless act which is in absolute teeth of the constitutional guarantee available to every citizen of this Country under Article 301 read alongside Article 19(1)(d) and (g) of the Constitution of India.

We again fail to appreciate the stand of the Excise Commissioner for after having appreciated the route followed by such similar consignment of West Bengal

Beverage Corporation Limited while adjudicating on the case of Tirupati Logistics Pvt. Ltd. (supra) which is present in his order dated 21.5.2018, he has chosen to oppose the prayer on the issue of route in the present case.

We wish to remind the authorities in the Excise Department that while it is their bounden duty to implement the law on prohibition in the State, they also have a duty to safeguard the constitutional rights available to the citizens of this Country and which cannot be interfered with either on whims or on mechanical application of the law even when the documents support a valid transportation from the originating station until its destination. A simple cross over to the territory of the State is not to be eyed with suspicion unless there are reasons to back such suspicion and which in the present case is absolutely lacking.

For the reasons so discussed, we hereby direct respondents no. 1 to 5 more particularly the confiscating authority, i.e. the District Magistrate, Kishanganj (in case confiscation proceeding has been initiated) and/or the designated court at Kishanganj (in case no confiscation proceeding is initiated) to ensure release of the truck bearing registration No. WB 89/0104 together with the goods loaded thereon as fully described in the documents supporting transportation at Annexures 2 series within a period of 72 hours of receipt/ production of a copy of this order, failing which the petitioner would be entitled to a cost quantified at Rs. 10 lacs payable by the Excise Department, Govt. of Bihar.

As a consequence, the confiscation proceeding, if any, initiated against the vehicle and the goods in question, would stand quashed.

The petitioner however would be at liberty to question the F.I.R. by taking recourse to proper proceedings.

The writ petition is allowed.

Let a writ of mandamus be issued accordingly.

