

(2020) 01 PAT CK 0135

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 25134 Of 2019

Damrudhar Pandit @ Damrudhar Kumar Pandit

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 92(2)
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 PAT CK 0135

Hon'ble Judges : Dinesh Kumar Singh, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Paras Nath, Runa

Final Decision : Disposed Of

Judgement

Heard Mr. Paras Nath, learned counsel for the petitioner and Ms. Runa, learned A.C. to Government Pleader No. 7.

The present writ application has been filed for restraining the respondent no. 2 from getting the vehicle in question i.e. ALFA PASSENGER 3

WHEELER Tempo (Auto Rickshaw) bearing Registration No. BR-11M-7402 seized in connection with Supaul P.S. Case No. 14 of 2019 registered

for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018

(hereinafter referred to as "the Act").

The prayer of the petitioner has been stipulated in paragraph no. 1 of the writ petition, which reads as follows:-

"Through this writ application the petitioner seeks following relief / reliefs as given below:-

(i) For issuance of an appropriate writ/ writs, order / orders, direction / directions

to the respondent no. 2 to stop the auction order date 24.8.2019

passed in confiscation proceeding vide Excise Case No. 120 / 019 by him and release the Tempo bearing registration no. BR-11M-7402 seized in

connection with Supaul P.S. Case No. 14 / 019 for the offence U/S 30(a) of Bihar Prohibition and Excise Act, 2016, may be issued.

(ii) For issuance of any other appropriate writ / writs, order / orders, direction / directions as the fact and circumstances of the case may require and

deemed fit by this Honâ??ble Court, may also be issued.

(iii) For issuance of any appropriate writ / writs, order / orders, direction / directions commanding the respondents to grant any other relief / reliefs to

which the petitioner is held entitle in the facts and circumstances of the case.â??

The factual matrix of the case is that on seizure of 70.292 litres of Indian made foreign liquor, the vehicle in question was seized, leading to registration

of Supaul P.S. Case No. 14 of 2019.

Learned counsel for the petitioner submits that petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle

in question has been brought on record as Annexure â?" 2 to the present writ petition. He further submits that the vehicle is rotting under the open sky

and consequently loosing its life, however, he admits that final order has already been passed by the learned Collector, Supaul vide order dated

24.08.2019 in Excise Case No. 120 of 2019 whereby the vehicle in question has been confiscated and the Motor Vehicle Inspector, Supaul has been

directed to assess the value of the vehicle in question, and thereafter, the Superintendent (Excise), Supaul has been directed to put the vehicle on

auction sale and deposit the sale amount in the Government treasury.

However, learned counsel for the respondent-State submits that since the final order has already been passed in the confiscation case, the petitioner

has liberty to file appeal under Section 92(2) of the Act. Hence, the petitioner may be relegated to avail the appropriate remedy.

Considering the rival submissions made by learned counsel for the parties, we are of the considered view that the discretionary jurisdiction under

Article 226 of the Constitution of India, having its self imposed restriction can only be exercised when there is no alternative efficacious remedy

except in certain exceptional cases, such as, where the fundamental rights have been violated or there is gross violation of the principle of natural

justice or where the impugned order or the proceedings are fully without jurisdiction or where the vires of any Act is under challenge, but the present case does not come within the exceptions as enumerated above. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 has held as follows:-

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

Section 92(2) of the Act provides the forum of appeal against the final order passed by the learned Collector in the confiscation case before the

Excise Commissioner within a period of ninety days from the date of the order complained of.

In the facts and circumstances as stated above, the petitioner can avail the remedy of appeal within a period of four weeks from the date of receipt /

production of a copy of this order along with an application for condonation of delay. If any such appeal is filed within the time fixed by this Court, it is

expected that the appellate authority would consider the application for condonation of delay sympathetically in view of the fact that writ application

was pending before this Court on the limited prayer of stay of auction sale of the vehicle in question. It is further expected from the authorities

concerned that if the vehicle in question has already not been auction sold till date, then the same shall not be put on auction sale till the conclusion of

the appeal, if any such appeal is filed.

Accordingly, this writ application with aforesaid observations and directions

stands disposed of.