

**(2022) 12 PAT CK 0055**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 2294 Of 2021

Md. Irfan Alam

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision:** Dec. 19, 2022

**Acts Referred:**

- Constitution Of India, 1950 - Article 39A
- Bihar Prohibition and Excise Rules, 2021 - Rule 14(2)
- Code of Civil Procedure, 1908 - Order 21 Rule 6
- Bihar Prohibition and Excise Act, 2016 - Section 30(a), 56, 58, 58(1), 58(3), 95, 95(2)

**Hon'ble Judges:** Chakradhari Sharan Singh, J; Chandra Prakash Singh, J

**Bench:** Division Bench

**Advocate:** Yogendra Mishra, Vishwajit Mishra, Md. Shahnawaz Ali, Vivek Prasad, Kundan Kumar

**Final Decision:** Dismissed

**Judgement**

1. The Bihar Prohibition and Excise Act, 2016 (the Act for short), has been enacted for complete prohibition of liquor and intoxicants in the territory of the State of Bihar. Chapter-VI of the said Act prescribes penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, and distribution etc. of any intoxicant or liquor. Section 56 of the Act delineates the list of such things, which would be liable for confiscation, in case an offence punishable under the Act is committed, which includes any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor. Section 58 of the Act confers upon the Collector a jurisdiction to order confiscation of a property, which is liable for confiscation under the Act,

which is seized or detained under the provisions of the Act, upon receipt of a report regarding such seizure/detention of such property liable for confiscation. Sub-section (3) of Section 58 of the Act requires giving the person concerned a reasonable opportunity of being heard before passing an order of confiscation.

2. It is indisputable in the instant case that a truck bearing registration No. WB-23D-9255 was seized, carrying huge quantity of illicit liquor, giving rise to registration of a criminal case being Rosera P.S. Case No. 58 of 2018 disclosing commission of an offence punishable under Section 30(a) and other allied Sections of the Act. The petitioner is the registered owner of the said truck and an accused in the said Rosera P.S. Case No. 58 of 2018.

Following the requirement under Section 58(1) of the Act, a report was sent to the District Collector about the seizure of the vehicle, recommending for its confiscation. The petitioner thereafter approached this Court by filing a writ petition under Article 226 of the Constitution of India, giving rise to

C.W.J.C. No. 18542 of 2019, seeking release of the truck. The confiscating authority initiated a confiscation proceeding for confiscation of the vehicle. A show cause notice was given to the petitioner, who appeared before the confiscating authority and filed his response. The confiscating authority ordered for confiscation of the vehicle, upon taking into account the admitted fact that a huge quantity of illicit liquor was found being transported for commercial purpose, in the said vehicle and accordingly ordered for its confiscation, vide an order dated 29.08.2020. The petitioner had preferred a statutory appeal before the appellate authority, i.e., the Excise Commissioner, Bihar which came to be dismissed by an order dated 30.09.2020. The truck, upon confiscation, has been auction sold in a public auction for a sum of Rs.7,89,000.00, in favour of the respondent No.7.

3. In the background of the above noted facts, the petitioner has challenged the order of confiscation dated 29.08.2020 passed by the confiscating authority, whereby the petitioner's truck has been ordered to be confiscated and the order dated 30.09.2020 passed by the appellate authority dismissing the petitioner's appeal against the order of confiscation. The said order of the appellate authority dated 30.09.2020 has been issued by

Memo. No. 3390 dated 13.10.2020. The petitioner is accordingly seeking a direction for release of the vehicle in his favour after setting aside the aforesaid orders passed by the confiscating authority and the appellate authority.

4. Two applications have been filed in the present proceeding seeking amendment in the writ petition. I.A. No. 1 of 2021 has been filed seeking following additional reliefs: -

â€œ(i) A writ order and direction in the nature of mandamus directing the respondent no. 2, 3 and 4 to hand over the vehicle truck vide its registration no.WB-23D-9225 to the petitioner as he is ready to deposit auction bid amount (rupees 7,89,000.00) of the respondent no.7.

(ii) A writ order and direction in the nature of certiorari for quashing the letter 161/Ma.ni dated 28.01.2021 issued by the respondent no.4 Excise superintendent Samastipur whereby and whereunder the vehicle was handed over to the respondent no.7 against the auction deposit amount rupees 7,89,000.00 deposited by him without issuing and serving auction Notice dated 22.12.2020 to the address mentioned inÂ certificate of Registration as

Md. Irfan Alam S/o Md. Kasim, 34/1 Ratu Sarkar Lane, Kolkata, West Bengal-700073.

(iii) A writ order and direction in the nature of certiorari for quashing of the memo No.2039/Ma.ni dated 22.12.2020, the notice issued by respondent no.4 on wrong address which was not mentioned in the owner book of the truck No.WB-23D-9255 Ratu Sarkar lane. House No.34/1 Chitranjan avenue Kolkata West Bengal -700073 is the actual and correct address of the vehicle where the office of the petitioner is situated.

(iv) Any other relief of the reliefs and the petitioner entitle to.â€

5. I.A. No. 2 of 2021 has been filed for adding further following reliefs: -

â€œ(1) That This interlocutory application has been filed for amendment in the prayer made in the main writ application so as to add reliefs for declaring the entire enactment being rule 14(2) of Bihar Prohibition and Excise Rule 2021 and Bihar Prohibition and Excise Act 2016 being in excess of power and contrary to the provisions of the Constitution and various other Central enactments as illegal, arbitrary, unconstitutional and ultra vires and ultra vires to the constitution of India as enshrined in Part 3 of the constitution of India and framed ignoring the principle of Natural Justice.

(ii). A writ order and direction in the nature of mandamus directing the respondent no. 1,2, 3 and 4 to amend the clause 2 of the rule 14 of Bihar

Prohibition And Excise Act 2021 inserting there in that the offer to purchase the vehicle on reserve Price to the petitioner as owner of vehicle and on

its refusal vehicle be auction sold to highest bidder.

(iii) Any other relief of the reliefs and the petitioner entitle to.â€

6. It is evident from the pleadings on record, particularly those in I.A. No. 2 of 2021, that the petitioner is questioning auction sale of the truck in

favour of respondent No.7, mainly on the ground that it has been done without issuing and serving any notice for auction on the address mentioned in

the owner-book, for a sum of Rs.7,89,000.00. It is the petitionerâ€™s case that against the settled principle of law that the owner of the vehicle must

be granted an opportunity to offer and pay the auction reserve price of Rs.4,00,000.00, he was not granted such opportunity and without offering an

acceptance of the petitionerâ€™s offer, the truck came to be auction sold in favour of respondent No.7 for a sum of Rs.7,89,000.00.

7. A counter affidavit has been filed on behalf of the State of Bihar stating therein that a huge quantity of illicit liquor was seized from the truck. After

the order of confiscation was passed and the petitionerâ€™s appeal was rejected, a public notice was issued in a newspaper on 29.12.2020 for public

auction of the vehicles confiscated under the Act which contained the registration number of the vehicle and its description, such as: type of the

vehicle, place where the vehicle was lying etc.. It has been further stated that an intimation regarding auction sale of the vehicle was given to the

petitioner also through speed post on his permanent address. After following due procedure, the vehicle was auction sold to the highest bidder

(respondent No.7) for a sum of Rs.7,89,000.00. Further, a new registration number of the vehicle has already been allotted in the name of said Rajeet

Kumar Singh, respondent No.7.

8. A rejoinder has been filed on behalf of the petitioner to the counter affidavit filed on behalf of the State of Bihar stating therein that the petitioner is

residing and doing his commercial vehicle transportation business at â€˜Ratu Sarkar Lane, 34/1, Chittaranjan Avenue, Kolkata, West Bengal,

700073â€™ and he is not connected nor concerned with the old residential address of the petitioner. It is the petitionerâ€™s case that the respondent

authorities ignored the said address given in the registration certificate of the vehicle, knowingly and deliberately and, therefore, the entire process of

auction sale is vitiated. There are two supplementary affidavits filed on behalf of the petitioner. In one of the supplementary affidavits filed on

27.09.2022, the petitioner has taken a plea that the entire confiscation and sale of the vehicle is unauthorized and illegal in the absence of any rule

having been framed under Section 95 of the Act prescribing the manner and procedure for selling the premises, confiscation and community fine. It

has further been stated that the confiscating authority did not take into account the show cause reply, which was filed by the petitioner in response to

the show cause notice issued for confiscation of the vehicle. It has also been stated in the supplementary affidavit that recovery of the illicit liquor

from the truck owned by the petitioner cannot be said to be from the conscious possession of the petitioner i.e the owner and, therefore, neither the

petitioner nor the vehicle is liable for any legal action under the provisions of the Act.

9. We have heard Mr. Yogendra Mishra, learned counsel appearing on behalf of the petitioner and Mr. Vivek Prasad, learned G.P.-7 representing the

State of Bihar. Respondent No. 7 has been represented by Mr. Kundan Kumar, learned Advocate.

10. Mr. Mishra, learned counsel for the petitioner has submitted that Section 95 of the Act requires the State Government to frame rules after

publication in the official gazette to carry out various purposes of the Act including for the purpose of confiscation/auction of the seized articles. In

exercise of the said power, the Rules came to be framed and published in official gazette on 27.07.2021 in the name of Bihar Prohibition Rules,

2021(the Rules for short). The provisions of the Act, more particularly Section 58 thereof were not workable before framing of the said Rules. He has

accordingly submitted that the entire exercise of confiscation and auction sale of the petitionerâ€™s truck are illegal and beyond jurisdiction. He has

further submitted that in any event, sub-section (3) of Section 58 of the Act requires a person a reasonable opportunity of being heard before an order

of confiscation is passed. In the present case, the order of confiscation does not mention even a word from the petitioner's reply to the show cause notice.

11. In support of his submission, he has placed reliance on this Court decision in case of Dr. Basant Kumar Singh vs. The State of Bihar, reported in

2018(1) PLJR 451 and the Supreme Court's decision in case of Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., reported in (2010)

13 SCC 336. He has further submitted that even the appellate authority has not duly considered the points raised before him by the petitioner, while

dismissing the petitioner's appeal. He has lastly submitted that as there was no rule prescribed for auction under the Act, general rule of public

auction ought to have been followed as laid down under Order XXI, Rule 66 and onwards of C.P.C.. He has submitted that Rule 66 of Order XXI

prescribes, *inter alia*, that notice of auction sale must be given to the owner of the property to be put on auction sale. He has submitted that in the

present case though a notice is claimed to have been issued by the official respondents, but the same returned unserved because of incomplete

address sans name of the village and post office etc.. He has accordingly submitted that the entire auction sale is void. He has further submitted that

had it been within the knowledge of the petitioner that the vehicle was being put to auction sale, he would have exercised his right to purchase the

same after offering the auction price. He contends that the truck, which was insured for a sum of Rs.40,00,000.0 has been auction sold for a meager

amount of Rs.7,89,000.00 only. In response to a submission made on behalf of the State that the statute did not require any issuance of notice before

auction sale, Mr. Mishra has submitted that the Act did not even prescribe any procedure for sale by public auction and, therefore, in the absence of

any procedure prescribed under the Act, general law of public auction was required to be adhered to.

12. Placing reliance on the Supreme Court's decisions in the case of *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), *S.L.Kapoor v.*

*Jagmohan and Others* (AIR 1981 SC 136) and *Raghunath Thakur vs. State of Bihar and Others* (AIR 1989 SC 620), he has submitted that even if

there is no provision for service of notice and consequence will be of civil injury, the authorities are required to follow the principles of natural justice

by (i) giving a notice inviting show cause, (ii) considering the show cause reply if filed and (iii) assigning reasons or accepting or not accepting the

explanation submitted in response to the show-cause notice. He has also argued that as the illicit liquor was not recovered from the possession, either

of the Driver or Khalasi of the truck and the consignors of the goods had admitted that they had consigned their articles describing them to be house

hold edible materials and cloths, the petitioner could not be held liable for penal action under the Act and, therefore, the truck could not have been

subjected to confiscation. He has further submitted that the owner of the vehicle was not at all responsible for carriage of the prohibited article. He

has reiterated that the consignors have also admitted in their statements that they had not disclosed that they had consigned bundles of wine in their

consignments and in such a situation neither Driver nor the Khalasi nor the owner of the vehicle owe any liability for the illicit materials kept concealed

in the consignment. According to him, since the entire action, right from the stage of confiscation up to the sale of the vehicle are void, they are fit to

be quashed. He has also addressed this Court on the merits, qua the recovery of illicit liquor from the said truck, to assail the impugned order of

confiscation and subsequent action of auction sale of the vehicle.

13. Mr. Vivek Prasad, learned G.P.-7, on the other hand, has submitted that it is an admitted fact that huge quantity of illicit liquor was recovered from

the truck in question, which has been confiscated under an order passed by the competent authority after giving the petitioner an opportunity of

hearing. He has submitted that though there is no statutory requirement under the Act for issuance of notice of auction sale to the owner of the

vehicle, a notice was, in fact, issued to him on his permanent address. He has submitted that in any view of the matter, a fair procedure was adopted

by issuing notice for public auction of the vehicles including the vehicle in question. He has argued that the petitioner has attempted to mislead this

Court by taking a false plea that he had no connection with his address at village Bhalnni-Sadar, P.S.-Mabbiop, District-Darbhanga to which notice of

auction sale was sent by the official respondents. He has drawn this Courtâ€™s attention to the address furnished by the petitioner in his letter addressed to the District Magistrate Samastipur (Annexure 12/1), to contend that the petitioner has falsely stated in his pleadings that he had no connection with the said address and the notice regarding auction is bad because it was not sent to the address mentioned in the certificate of registration of the vehicle.

14. We have carefully perused the pleadings on record and we have given our thoughtful consideration to the rival submissions made on behalf of the parties.

15. At the outset, we strongly deprecate the conduct of the petitioner in taking apparently a palpably false plea in paragraph 3 of his rejoinder affidavit filed on 14.12.2021, wherein the petitioner has specifically stated that petitioner does not reside at his old residential address in the district of Darbhanga in Bihar and that the notice ought to have sent to â€œRatu Sarkar Lane No. 34/1, Chittaranjan Avenue, Kolkata, West Bengal- 700073â€. The petitioner had mentioned the following address in his communication to the District Magistrate, Samastipur, which appears to have been received in the office of the District Magistrate, Samastipur on 17.02.2021: -

â€œMd. Irfan Alam, S/o Md. Kasim, Vill- Bhalnni-Sadar, PS-Mabbi O.P., Distt. Darbhanga.â€

16. Be that as it may, the fact remains that a notice was issued for public auction of the vehicle, in question, in a newspaper, which fact has not been disputed.

17. Coming to the question of legality of the impugned order of confiscation dated 29.08.2020; it is noteworthy that even the petitioner has not disputed the fact that a huge quantity of illicit liquor was recovered from the truck in question, which made it liable for confiscation. The petitioner is the registered owner of the truck. It is the petitioner's case that the consignors of the articles had described the articles loaded in the truck to be eatable materials and clothes. The illicit liquor was recovered from stationery bundles, which were kept inside the packets and, therefore, there was no source

for the petitioner or his agents to identify the genuineness of the goods. The bundles were sealed and, therefore, they could not be broken by any means. The consignors had also executed bonds to the effect that no intoxicating or banned item, injurious to health was loaded on the truck. In such circumstances, the manager believed that there was no prohibited goods inside the stationery bundles kept inside the packet. It is, accordingly, the petitioner's case that the petitioner and his staff had absolutely no knowledge about the illegal and prohibited articles being carried on by the consignors in their consignment, if any, loaded in the truck.

18. Nevertheless, it is an admitted fact that the petitioner's truck was found loaded with the huge quantity of illicit liquor in the State of Bihar, which was being transported for commercial sale, in the breach of the provisions under the Act, constituting offence under the said Act. This being an admitted fact, based on a bald plea that the petitioner was ignorant about illegal transportation of illicit liquor is not a sufficient ground for this Court to interfere with the impugned order of confiscation.

19. The submissions made by the Yogendra Mishra, learned counsel that his reply filed against show cause notice for confiscation was not duly considered by the confiscating authority, has no substance for the reason that the confiscating authority has clearly recorded in the impugned order that the petitioner (the truck owner) could not dispute the fact that huge quantity of illicit liquor was recovered from the truck. As a matter of fact, there was no dispute about on the point that the illicit liquor was recovered from the truck, in question, which made the truck liable for confiscation, by operation Section 56 of the Act.

20. In our opinion, in the facts and circumstances of the present case, the impugned order cannot be said to be suffering from the vice of non-application of mind, there being no dispute about the fact of recovery of illicit liquor from the truck in question. The impugned order of confiscation dated 29.08.2020 does not require any interference. We do not find any reason to interfere with the order of the appellate authority rejecting the petitioner's appeal for the same reason.

21. Coming now to the petitioner's challenge to the auction sale of the truck on the ground that the same was done behind his back, it is noteworthy

that it was initially the petitionerâ€™s case that the notice was not sent to the address mentioned in the registration certificate of the vehicle. We have

already deprecated the petitionerâ€™s conduct of taking a false plea in the present proceeding under Article 226 of the Constitution that he did not

have any connection with his permanent address, after having noticed the address furnished by him in his letter (Annexure 12/1) dated 17.02.2021.

This false plea has apparently been taken for the sole purpose of making out a ground before this Court to challenge the process of auction sale. The

petitioner, in our opinion, has not approached this Court with clean hands and has taken prevaricating/vacillating stands on the point of his address to

which the notice was required to be sent. We find substance in submission made on behalf of the State that in the absence of any statutory

requirement under the Act to ensure actual service of notice on the owner of an article liable to be auction sold upon confiscation, an auction sale

cannot be held to be illegal on the ground that the notice of auction sale was not served upon such owner. In any event, admittedly, a notice in the

newspaper was published for public auction of the vehicle. Accordingly, this ground taken on behalf of the petitioner fails.

22. Mr. Mishra has attempted to convince this Court that the provisions of the Act were not workable till framing of the Rules under Section 95 of the

Act relating to the matters mentioned therein including â€œregulating disposal of confiscated articlesâ€. The language of Section 95 of the Act is

amply clear and it states that the State Government â€œmayâ€ by notification in official gazette make rules, not inconsistent with the provisions of the

Act to carry out the purposes of the Act. Sub-section (2) of Section 95 of the Act prescribes that without any prejudice to the generality of the

aforesaid power, such rules â€œmayâ€ provide for or any of the matters mentioned therein. The use of the word â€œmayâ€ in Section 95 of the Act

cannot be read as â€œshallâ€ to make it mandatory for the State to frame rules in order to make the provisions of the Act workable. On plain reading

of Section 95 of the Act, it is abundantly clear that the same is an enabling provision to facilitate implementation of the Act. In our considered opinion,

the Act cannot be said to be unworkable till Rules came to be framed by the State Government in the year 2021. The decisions cited by Mr. Mishra,

learned counsel for the petitioner, as noted above, have no application in the present set of facts, when recovery of prohibited articles from the truck owned by the petitioner is an admitted fact. We do not find any case made out of violation of principles of natural justice. The plea that the authorities ought to have followed the procedure prescribed under Order XXI Rule 66 of the CPC, in the absence of any procedure prescribed under the Act for auction sale of the vehicle, to challenge the auction sale in the present case is untenable. We reiterate our observation that the petitioner has attempted to mislead the Court on the point of his address to which the notice ought to have been sent, in a proceeding under Article 226 of the Constitution of India, which is a discretionary, extraordinary and equitable remedy.

23. Though, we intended to impose a befitting costs on the petitioner for taking a false plea before this Court, we have restrained ourselves from doing so.

24. This application, in our opinion, is meritless and is accordingly dismissed.