

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12581 of 2024

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Ashok Rai, Son of Bhuneshwar Rai, Resident of Village- Gyassuddinpur,
P.O. Ram Nagar, P.S. Gayghat, District – Muzaffarpur.

... ... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The Superintendent of Police, Muzaffarpur.
4. The Superintendent, Excise Department, Sitamarhi.
5. The Officer in Charge, Ahiyapur P.S. Muzaffarpur.
6. Chandan Kumar, Son of Yogendra Thakur, Resident of Village - Semra Hat, P.S. Banjaria, District- East Champaran.
7. Rajesh Kumar Sharma, Son of Joginath Sharma, Resident of Ward No.11, Basbariya Mahsant urf Rampur Lashmi, P.S. Sitamarhi, District – Sitamarhi.

... ... Respondents.

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*Constitution of India---Article 226---Indian Penal Code---Section 379---
Duties of Confiscating Authority and Auctioning Authority---writ petition
seeking directions commanding respondent authorities to release
petitioner's car seized in connection with a Police Case registered u/s 379
I.P.C.*

*Findings: Petitioner's stolen vehicle was involved for the offences under
the Excise Act and, in this backdrop, official respondents have proceeded
to confiscate the vehicle and proceeded to auction the subject matter of the
vehicle--- The confiscating authority and auctioning authority should have
ascertained whereabouts of the owner of the vehicle through the Regional
Transport Office----- it is evident that petitioner has not been issued notice
relating to seizure of his vehicle and auction of the subject matter of the
vehicle--- the official Respondents have committed blunder insofar as
confiscation proceedings and auction of vehicle at Rs.1,30,000/- whereas
the vehicle was insured for a sum of Rs.3,50,000/----- in most of the*

identical matter, there are serious lapses on the part of the concerned officials/competent authority who undertake the confiscation proceedings and auction proceedings in not following the due process of law resulted in huge loss to the State Exchequer--- There is no standard insofar as valuation of the vehicle before its auction like ascertaining the value of the vehicle through Motor Vehicle Department/ Insurance Company----If the Insurance Policy is not available in respect of particular vehicle in that event make of the vehicle/model read with Insurance Company's opinion should have been taken----- The State Government officials must take note of their power coupled with duty--- The Constitution has trusted the public servant as a honest administrator to effectuate the public policy and constitutional goals but the competent authority/respondents herein, have betrayed that trust and tended to frustrate the public policy--- concerned authority directed to make payment of Rs.3,50,000 in favour of the petitioner and issue a Demand Draft within a period of eight weeks from today, failing which petitioner is entitled to simple interest at the rate of 6% per annum from the date of seizure of the vehicle till payment is made---writ allowed. (Para- 2 to 6)

(1880) 5 AC 214, 1952 SCR 135

.....Relied

Upon.

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... .. Respondents.

Appearance :

For the Petitioner : Mr. Ranjit Kumar Thakur, Advocate.
For the State : Mr. Prabhakar Jha, Government Pleader-27.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-03-2025

In the instant writ petition, petitioner has prayed for the following relief(s):

“For writ/writs, order/orders, direction/directions commanding respondent authorities to release Bolero Pickup (Mahindra), Registration No.BR06GB-1358 in favour of the petitioner being the rightful owner seized in connection with Ahiyapur P.S. Case No.1287/2019 U/S 379 I.P.C. by the O/C Ahiyapur P.S. which was being purchased by the Respondent No.7 from the



Respondent No.6 who purchased the above stated vehicle in section been conducted by the Excise Department, Sitamarhi.”

2. Petitioner is stated to be owner of the subject matter of the vehicle bearing Registration No.BR06GB-1358-Bolero Pickup (Mahindra). The said vehicle was theft by some miscreants and in the result, petitioner had registered F.I.R. on 24.10.2019 in Ahiyapur P.S. Case No.1287 of 2019 (District-Muzaffarpur) for the offence under Section 379 of the Indian Penal Code. Theft vehicle was involved for the offences under the Excise Act. In this regard, F.I.R. was registered on 21.12.2019 in Suppi P.S. Case No.268 of 2019 (District-Sitamarhi). In this backdrop, official respondents have proceeded to confiscate the vehicle and proceeded to auction the subject matter of the vehicle on 10.03.2022 pursuant to confiscation order dated 06.07.2020. The confiscating authority and auctioning authority should have ascertained whereabouts of the owner of the vehicle through the Regional Transport Office. Further perusal of the records, it is evident that petitioner has not been issued notice relating to seizure of his vehicle and auction of the subject matter of the vehicle. Therefore, at every stage, the officials have committed blunder insofar as confiscation proceedings and auction of vehicle at



Rs.1,30,000/- (Rupees One Lac Thirty Thousand), whereas the vehicle was insured for a sum of Rs.3,50,000/-(Rupees Three Lacs Fifty Thousand) as is evident from Annexure-P/1-MAGMA HDI/General Insurance Company Ltd., for the period from 18.09.2019 to 17.09.2020. Therefore, as on the date of the seizure of the vehicle, Insurance Policy was in vogue. Therefore, petitioner is entitled to value of the insured vehicle at Rs.3,50,000/-(Rupees Three Lacs Fifty Thousand) in terms of the Insurance Policy in the light of the fact that alleged incident relating to theft of the vehicle and seizure of the vehicle for the offences under the Excise Act was on 24.10.2019 read with subsequent F.I.R. dated 21.12.2019.

3. The concerned authority is hereby directed to make payment of Rs.3,50,000/-(Rupees Three Lacs Fifty Thousand) in favour of the petitioner and issue a Demand Draft within a period of eight weeks from today, failing which petitioner is entitled to simple interest at the rate of 6% per annum from the date of seizure of the vehicle till payment is made.

4. In most of the identical matter, we have come across there are serious lapses on the part of the concerned officials/competent authority who undertake the confiscation proceedings and auction proceedings in not following the due process of law



resulted in huge loss to the State Exchequer. There is no standard insofar as valuation of the vehicle before its auction like ascertaining the value of the vehicle through Motor Vehicle Department/ Insurance Company. If the Insurance Policy is not available in respect of particular vehicle in that event make of the vehicle/model read with Insurance Company's opinion should have been taken. Today itself, we have come across a case where a truck was auctioned for a sum of Rs.2,00,000/- (Rupees Two Lacs), whereas we have noticed that insurance value is around at Rs.21,00,000/-(Rupees Twenty One Lacs). These are lapses which are happening in the Excise Department/ Revenue Department insofar as dealing with the offences under the Excise Act. If the same thing continued, the State Exchequer would be put into under loss. Tax payer money cannot be wasted in this manner.

5. The State Government officials must take note of their power coupled with duty. In this regard, principle of power coupled with duty was succinctly stated by **Earl Cairns, L.C. in the House of Lords in Julius Versus Lord Bishop of Oxford [(1880) 5 AC 214] (AC at pp. 222-23)** quoted with the approval therewith by the Hon'ble Supreme Court in **Commissioner of Police Versus Gordhandas Bhanji [1952**



SCR 135] (SCR at p. 147) thus:

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

6. Thus, it would be clear that the respondent/competent authority was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation to achieve excellency and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policies like Article 14 and all interrelated inclusive of directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. The Constitution has trusted the public servant as a honest administrator to effectuate the public policy



and constitutional goals. The competent authority/respondents herein, have betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the competent authority/official respondents have failed to perform that constitutional duty. The Chief Secretary of the State of Bihar should look into and take appropriate action against the erring officers concerned and report compliance to the Registry of this Court within two months.

7. With the above observations, the petitioner has made out a case.

8. Accordingly, the instant writ petition stands allowed.

9. List for compliance of para-6 on 17.06.2025.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2025.
Transmission Date	NA

