

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 2058/12

Case of **AJIT SINGH**

The complaint in this matter is about forcible closure and sealing of an excise (country liquor) shop by the police.

The case of applicant Ajit Singh is that he is licensee of Country Liquor Shop no.6 (Sangat par) at Masaurhi. He has been doing business and paying duty etc. to the state as per rules. As he did not pay money by way of illegal gratification to SHO Masaurhi P.S. – as demanded by him, he out of annoyance came to the shop and got it sealed on 8.5.2012. He also arrested six persons from the shop, sent them to jail and instituted Masaurhi P.S. Case No.127/12. The shop remained closed from 8.5.2012 to 18.5.2012. The closure of the shop not only caused business loss to the applicant, it also resulted in loss of excise revenue to the state. (Excise duty is collected and passed on to the state on sale of liquor).

Report was called from Sr.S.P. Patna and he brought on record the report of SDPO Masaurhi. The report stated that action was taken on receipt of confidential information about sale of liquor in violation of the conditions of license. Not satisfied with the report, notice in terms of section 16 of the Protection of Human Rights Act was issued to the officers concerned, namely, Sri Pankaj Kumar the then SDPO Masaurhi (at present with STF Patna) and Sri Sanjeev Shekhar Jha, the then SHO Masaurhi P.S. (at present SHO Patrakar Nagar P.S.). Pursuant to notice they appeared and filed their written defence and the matter was finally heard on 11.4.2013. Sri Ashok Kumar Chaudhary the present SDPO Masaurhi was present on behalf of Sr.S.P. Patna.

From the written defence of the said two officers, as indeed the report of SDPO Masaurhi, it is the admitted position that the shop was sealed by the said officers on ground of alleged violation of conditions of license. The legal position is settled that for violation of the conditions of license and/or the provisions of the Bihar Excise Act and Rules, the officials of the Excise Department, namely, the Excise Commissioner, Collector of the district or Excise officers above the rank of Sub Inspector alone can take any action, and the police has no jurisdiction to enter and inspect any excise shop or take action on account of any violation of conditions or provisions of the Act/Rules. Section 69 of the Bihar Excise Act may be quoted in extenso as under:-

“69. Power to enter and inspect, and power to test and seize measures, etc. – Any of the following officers, namely:–

- (a) the Excise Commissioner, or
- (b) a Collector, or
- (c) any Excise Officer not below such rank as the State Government may by notification, prescribe, may subject to any restrictions prescribed by the State Government by rule made under section 89, –
 - (i) enter and inspect at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant; and
 - (ii) enter and inspect, at any time during which the same may be open, any place and in which any intoxicant is kept for sale by any licensed person; and
 - (iii) examine the accounts and registers maintained in any such place as aforesaid; and
 - (iv) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus of intoxicant found in any such place as aforesaid; and
 - (v) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.”

The power under section 69 of the Act is to be exercised by officials authorized therein to the exclusion of any other official including the police. Applicant has enclosed copy of decision of the Excise Commissioner dated 14.8.2009 in Excise Appeal Case No.20/2009 (Siddharth Kumar vs. Collector Patna) in support of his contention. The applicant has also enclosed copy of the letter of the Assistant Commissioner of Excise, Patna dated 15.5.2012 whereby he requested SHO Masaurhi to open the shop so that the stock could be verified. He pointed out that closure of the shop not only results in loss of excise revenue but also gives rise to claims by the licensee for compensation for which the officer sealing the shop may be responsible. The persuasion apparently failed to cut ice and the Police did not care to get the seal opened until 18.5.2012.

This Commission had occasion to consider a similar situation in the case of Anuj Kumar Singh (File No.1751/11) with respect to Foreign Liquor Shop no.30 at Rampur Road, Patna. In defence of similar action, the police officials concerned placed reliance on Section 23 of the Police Act which empowers the police to visit any liquor shop but only “for the purpose mentioned in the section”. The section does not authorize the police to enter/visit the excise shop to see as to whether the business was being carried out in accordance with excise rules. Of course, if any criminal activity is alleged to have happened or going on in the shop premises, the police would be within their bounds to enter the shop premises but only to check the criminal activity and not to check as to how the business was being carried on.

As a matter of fact, the police has no means to verify as to whether there is any violation of conditions of license and/or provisions of the Acts/Rules. Indeed, FIR does not mention about any such thing. The FIR is about sale of liquor. The stand of the police officers is that they visited the shop on receipt of confidential information but the information has not been brought on record to show as to what kind of information – whether relating to any criminal activity – was received. As a matter of fact, in view of the admitted position, that the police visited the shop and took the impugned action on account of “violation of the conditions of license” it is not necessary to go into that aspect.

By reason of the impugned action the applicant suffered not only business loss but also loss of reputation and, further, harassment. He had to run from pillar to post to get the shop opened. There is nothing to suggest that after the shop was opened anything was found amiss with respect to the sale of liquor. The Commission, in the circumstances of the view that for the impugned acts committed by the then SDPO Masaurhi district Sri Pankaj Kumar and the then SHO Masaurhi P.S. Sri Sanjeev Shekhar Jha, departmental proceedings should be initiated and they should pay monetary compensation to the applicant. In the facts and circumstances, compensation is quantified at rupees fifty thousand which should be paid half and half by the two officials.

Sr.S.P. Patna is accordingly directed to initiate departmental proceeding against the S.I. Sanjeev Shekhar Jha now SHO Patrakar Nagar P.S. and pay rupees twenty-five thousand to the applicant from his salary.

As regards Sri Pankaj Kumar – considering the rank of the officer – such action can be taken at the governmental level. The Commission would accordingly direct Secretary, Home Department to take steps for recovery of the amount from the salary of the officer and initiate departmental proceeding against him.

Action as aforesaid should be taken within six weeks.

Put up on 10.6.2013 awaiting compliance.

Copy of this order may be sent to (i) applicant (ii) Secretary, Home Department, Government of Bihar, (iii) Sr.S.P. Patna (iv) Sri Pankaj Kumar, Dy.S.P. STF, Patna and (v) Sri Sanjeev Shekhar Jha, SHO Patrakar Nagar P.S, Patna for information and compliance, as the case may be.

Date: 18.04.2013

Justice S.N. Jha
Chairperson