

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.878 of 2015

IN

Civil Writ Jurisdiction Case No. 20266 of 2010

- =====
1. The Union of India, through the General Manager, EC Railway, Hazipur.
 2. The Divisional Railway Manager, E.C. Railway, Mugalsarai.
 3. The Sr. Divisional Commercial Manager, E.C. Railway, Mugalsarai
- Respondents/Appellants

Versus

1. Pawan Kumar Poddar, aged about 52 years, S/o Shri Manohar Lal Poddar, a handling contractor of Navratan Bazar, Sasaram, District-Rohtas
2. The Managing Director, Bihar State Warehousing Corporation, First Floor, Maurya Lok Complex, Patna-1.

.... Writ petitioner- Respondent

.... ... Performa respondent/Respondent

=====

Appearance :

For the Appellant/s : Mr. Devendra Kumar Sinha, Senior Advocate

Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Mr. Nagendra Upadhyay, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-05-2015

This Letters Patent Appeal is filed under peculiar circumstances and in a very limited context.

CWJC No.20266 of 2010 was filed by the respondent herein, with a prayer to quash the Rates Circular no.74 of 2005 issued by the Joint Director Traffic Commercial (Rates) Railway Board, on 19.02.2005, and corrigendum dated 17.1.2008. Certain other ancillary reliefs were also prayed for.

The writ petition was listed on 14.12.2010 for admission. No development had taken place on that date, and it was

listed on 20.12.2010. It was directed to be listed on the next date, under the same caption. On 21.12.2010, the learned Standing Counsel for the Railways, i.e. the appellants, and the Bihar State Warehousing Corporation took time for seeking instructions, and to file respective counter affidavits.

It was four and half years thereafter, that the writ petition was listed on 21.4.2015. On noticing that the appellants herein, i.e. the Railways, did not file counter affidavit by that date, the learned Single Judge directed the appearance of the Divisional Railway Manager, Mughalsarai, i.e. the 2nd appellant herein, in person on 27th April, 2015. On behalf of the appellants, a counter affidavit is said to have been filed on 23rd April, 2015. Apart from that, the Senior Divisional Commercial Manager, i.e. 3rd appellant, appeared on 27th April, 2015. An application was also filed for exemption of the appearance of the 2nd appellant. Not convinced with the reasons stated in the application, the learned Single Judge directed appearance of the 2nd appellant on 5th May, 2015. It is in this background, that the Letters Patent Appeal has been filed.

Heard Sri Devendra Kumar Sinha, learned senior counsel for the appellants and Sri Nagendra Upadhyay, learned counsel for the respondent no.1.

As mentioned earlier, it was nearly four and half years



after the first listing, that the matter was taken up for admission. Normally, it is only when rule is issued by the Court after admission that the respondents are under obligation to file counter affidavit. Even then, much would depend upon the facts of the case. In a given case, the respondents may choose not to file a counter affidavit. The result of such failure would be that the contents of the writ petition would remain uncontroverted. The Court can proceed to adjudicate the dispute without even waiting for the counter affidavit to be filed, in case the time stipulated therefor has elapsed. In the instant case, it is represented that the counter affidavit has since been filed, after the learned Judge made observations.

We quite understand the dissatisfaction of the learned Single Judge as regards the omission of the respondents to defend the case. However, requiring the respondents to appear, would certainly result in dislocation of important assignments. The Railway administration is so complicated that several minute situations develop and everyday the presence of the senior official is essential to handle them. Any lapse in this regard, would turn out be catastrophic, resulting in accidents or other major mishaps. It is a different matter that if the presence is inevitable, such as where the officer figured as respondent in the contempt case or where any serious lapse is noticed.

We are of the view that adjudication of the writ petition can proceed, without the physical presence of the 2nd appellant.

With this observation, we dispose of the Letters Patent Appeal.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

Sunil/-

U			
---	--	--	--