

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18776 of 2014

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Mahendra Prasad, Son of Sri Ramnandan Prasad Sinha, R/o Mangal Bhawan
Chakaram, Sri Krishna Nagar, P.S.- Budha Colony, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Cabinet Secretary, Government of Bihar, Patna
3. The Home Secretary, Government of Bihar, Patna
4. The Union Government of India through its Secretary, Home Ministry,
Government of India.
5. The Secretary, Home Department, North Block, Central Secretariat, New Delhi
6. The Secretary, Ministry of Personnel and Pension Affairs, Union Government of
India, New Delhi
7. The Director, CBI, New Delhi
8. Sri Nitish Kumar, (the then Chief Minister, Government of Bihar), Son of Late
Shri Kaviraj Ram Lakhan Singh, R/o Village- Hakikatpur, P.O.- Bakhtiyarpur,
District- Patna, Bihar. at present residing in 7 Circular Road, Patna, P.S.-
Sachivalay, District- Patna
9. Sri Sushil Kumar Modi, (the then Deputy Chief Minister, Government of Bihar)
Son of Late Shri Moti Lal Modi, R/o Rajendra Nagar, Road No. 10, P.S.-
Kadamkuan, District- Patna
10. Sri Vijayendra Prasad Yadav, son of not known to the petitioner, Finance
Minister, Government of Bihar
11. The BIT Mesra Ranchi, State of Jharkhand through its Vice Chancellor
12. The Vice Chancellor, BIT Mesra, Ranchi Jharkhand

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Dinu Kumar Mr. Arvind Kumar Sharma Mr. Ritu Raj Miss Ritika Rani, Advocates.
For the State	:	Mr. Lalit Kisore, Pr. AAG 1 Mr. Bishwa Bibhuti Kr. Singh, AC to Pr.AAG
For Resp. Nos. 11 & 12:	:	Mr. S.K. Giri, Advocate.
For the Union of India	:	Mr. Sujeet Kumar Sinha, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-11-2016

Heard learned counsel for the petitioner and learned counsel
for the respondents.

2. The petitioner in the present writ petition filed in the



public interest seeks mandamus for direction to the Central Bureau of Investigation to look into the matter after lodging first information report for misappropriation and defalcation of Rs. 23 crores paid to Birla Institute of Technology, Mesra, Ranchi (hereinafter referred to as “BIT”) as subsidy for establishment of BIT Extension Centre and transfer of 20 acres of land costing Rs.2000 crores in favour of BIT illegally.

2. The argument of learned counsel for the petitioner raised is that huge amount of Rs. 23 crores has been withdrawn from the consolidated fund for unforeseen expenditure and paid to BIT and that 20 acres of land situated in Veterinary College campus have been transferred to BIT on 28.08.2002 without advertisement and tender resulting loss of the Government property. It was pointed that Rs.23 crores transferred to BIT was part of the unforeseen expenditure as defined under Rule 4 of the Bihar Contingency Fund Rule, 1953 and could not be transferred in favour of the BIT.

3. The petitioner refers to Annexure-1, Resolution of the State Government wherein the State Government has decided to set up the institutions in the State of Bihar after bifurcation of the State and on creation of separate State of Jharkhand. It is contended that the funds of the State have been given to BIT in violation of the public policy.

4. In the counter affidavit dated 20th of March, 2015, the



State has pointed out that there were Engineering Colleges, namely Birla Institute of Technology, Sindri (BIT), MIT Muzaffarpur and BCE Bhagalpur in undivided Bihar. The largest one i.e. BIT Sindri was located in the newly carved State of Jharkhand after bifurcation of the State and only two smaller Institutes with less capacity remained with the State of Bihar. Therefore, the State decided to establish an Engineering College in the State capital so that the students of Bihar may take admission for their engineering education. Therefore, a Memorandum of Understanding was executed with the Vice Chancellor of BIT Mesra for establishment of Extension Centre at Patna. As per the provisions contained in the Memorandum of Understanding, all the moveable and immovable properties including the land and the building remains the property of the Government of Bihar. BIT has only right to manage and run the Extension Centre. It is pointed out that 50% of the total seats of the Extension Centre are reserved for the candidates who have passed +2 Level Examination from any institutions located in the State of Bihar and all admissions will be made from the merit list of the All India Engineering Entrance Examination. In the Memorandum of Understanding attached, the following conditions are extracted as follows:-

“AND WHERE AS the Second Party has proposed to establish an Extension Centre of Birla Institute of Technology at Patna. In the proposed Extension Centre there would be a provision of an annual intake



of 300 seats comprising of Computer Engineering (60 seats) Electronics & Communication Engineering (60 seats) and Electrical Engineering (60 seats) from the session 2006-07 onwards and two other useful relevant and appropriate branches (120 seats) will be started from the session 2007-08 onwards. This Extension Centre has been proposed to be established with the financial assistance, as the capital investment from the Government of Bihar amounting Rs. 23.00 crores only (Rupees twenty three crores only) in the form of non-recurring support initially, while the recurring expenditure of the Extension Centre will be borne by the Birla Institute of Technology, Mesra, which will include all maintenance expenditure on buildings, furniture, machines/equipment/instruments, electricity, water supply, municipal taxes and other taxes/levies as applicable. However, the First party i.e. the Government of Bihar would further support additional non-recurring expenditure to the extent of Rs. 17.48 crores only (Rupees seventeen crores forty eight lakh only) beyond Rs 23.00 crores, (Rupees twenty three crores only) as stated above on the basis of the revised Detailed Project Report to be prepared by the Second Party in reference to civil works, machines/equipment/instruments, books and furniture.

AND WHERE AS the Second Party agree that the movable and immovable properties and all assets created out of these funds will remain the property of the Government of Bihar. The Second Party will only

manage and run the Extension Center.

AND WHERE AS the Second Party also agree to make 50% of the total seats of the Extension Centre available to the candidates who have passed their + 2 level examination from any institution located in Bihar. However, the reservation policy of the State Government regarding the percentage of seats to be earmarked for SC/ST and other categories will be applicable to these 50% students of the Extension Centre at Patna. The Birla Institute of Technology, Mesra will be at liberty to distribute the remaining 50% of the seats to students, as per its own rules and procedures to other students belonging to other states of the country, wherever applicable. However, all the admissions would be made as being done at BIT, Mesra, like through AIEEE as it is being currently done.”

5. In view of the averments made in the counter affidavit and the terms of Memorandum of Understanding, it transpires that the State is the owner of the land and building thereon and only the building has been constructed by the BIT from the funds provided by the State. Still further 50% of the seats are required to be filled up from amongst the students of the Bihar. Therefore, it cannot be said that any amount has been given to the BIT for its own purpose but the money has been given to set up the Extension Centre for providing

engineering education to the students of the Bihar.

6. Mr. Lalit Kishore, learned Principal Additional Advocate General No. 1, points out that the BIT, Patna is running since 2007 and the students are being admitted in every year.

7. In view of the said facts, we are satisfied that there is no defalcation or misappropriation of the Government money which warrants any direction as sought for by the petitioner.

8. Considering the above, the writ petition is dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/Ibrar

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29.11.2016
Transmission Date	N.A.