

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3165 of 2011

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1. Raj Kishore Prasad Jaiswal, S/o Sri Matar Choudhary, R/O Vill.- Diwara, P.S. Nauhatta, Distt.- Saharsa.
 2. Mahendra Prasad, S/o Sri Bhagwat Prasad, R/O Vill.- Chak, P.S.- Karai, Parsurai, Distt.- Nalanda.
 3. Ramashish Pandit, S/O Late Ram Chandra Pandit, R/O Vill.- Piroja, P.O +P.S. Akangarsarai, Distt.- Nalanda
 4. Rajkishore Prasad Singh, S/O Sri Shiivnandan Prasad Singh, R/O P.O.+P.S. Hilsa, Distt.- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. Mr. Ravindra Pawar, the Commissioner-cum-Secretary to Govt. P.H.E.D. Visheshwariya Bhawan, Bailey Road, Patna
3. Mr. Surendra Kumar, the Chief Engineer (Mechanical) P.H.E.D., Bihar Patna
4. Mr. Ramanjee Jha, the Executive Engineer P.H.E.D., Division Hilsa, Distt.- Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh-Advocate
 For the Respondent/s : Mr. Pushkar Narain Shahi-AAG-10-Sr. Advocate
 Mr. Sanjeet Kumar Singh-AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 13-04-2016

Instant M.J.C. petition under the garb of Article 215 of the Constitution of India read with Section 11 and 12 of the Contempt of Courts Act, 1973 has been filed by the petitioner with a prayer to initiate a contempt proceeding against the opposite parties/ contemnors on account of non-compliance of judgment/ order dated 09.03.2011 passed in C.W.J.C. No.10243 of 2006 (Annexure-1). Accordingly, the opposite parties/ contemnors have their appearance and filed show-cause disclosing therein that the judgment impugned



has been challenged under Letters Patent Appeal No.2021 of 2011. So, the present proceeding be kept in abeyance for the time being and in pursuance thereof, vide order dated 07.02.2012, ordered so. After disposal of L.P.A. No.2021 of 2011, another show-cause was filed wherein it has been stated that the order passed under L.P.A. No.2021 of 2011, has been complied with and on account thereof, instant petition be dismissed.

2. The order passed by the Division Bench under L.P.A. No.2021 of 2011 has been annexed under Annexure-A of the show-cause and to appreciate the controversy in its right perspective, the relevant portion is quoted below:-

“Pending this Appeal, the State Government has, in its Finance Department, passed a Resolution on 17th October 2013 for regularization of the services of the daily wage employees absorbed in Work Charge Establishment and in receipt of regular pay.

In view of the above referred Resolution dated 17th October 2013, the Appeal and the interlocutory application are disposed of.”

3. The learned counsel for the petitioner has submitted that aforesaid order passed in L.P.A. No.2021 of 2011 did not contain and dealt with the principle laid down by the Hon’ble Apex Court in ***Civil Appeal No.3486 of 2006*** (arising out of S.L.P. No.11376 of



2003) *Dinbandhu Pandey v. State of Bihar and others* whereupon the order dated 09.03.2011 has been passed under C.W.J.C. No.10243 of 2006. Furthermore, it has also been submitted that Resolution dated 17.10.2013, happens to be contrary to the spirit of the judgment passed by the Hon'ble Apex Court in *Dinbandhu Pandey (Supra) Case* on account thereof, the finding so recorded by the Division Bench would not be applicable in the facts and circumstances of the case. Furthermore, it has also been submitted that on account of aforesaid deficiency, the question of merger would not arise. Hence, instant contempt proceeding is to be proceeded with a direction to the contemnors either to comply the findings so recorded by the Learned Single Judge under C.W.J.C. No.10243 of 2006 (Annexure-1), failing which be dealt with in terms of Section 11 and 12 of the Contempt of Courts Act. Also relied upon *Monnet Ispat & Energy Limited vs. Bihar State Mineral Development Corporation through its Managing Director & Ors. reported in 2014(2) P.L.J.R. 584.*

4. On the other hand, the learned AAG-10 has submitted that instant contempt proceeding has become infructuous and on account thereof, same should be dropped. To justify the same, it has been submitted that the judgment (Annexure-1) passed by the Learned Single Judge has been challenged under L.P.A. No.2021 of 2011 and the same has been disposed of in terms of observation so made

therein. On account of theory of merger, the judgment of the Learned Single Judge has merged with the finding so made under L.P.A. and as the contemners have already complied therewith, therefore, instant proceeding, now loses its relevancy. Also referred ***Jaswant Singh and others v. Union of India and others reported in (1979) 4 SCC 440.***

5. After going through the relevant Annexures filed on behalf of respective parties, it is evident that C.W.J.C. No.10243 of 2006 (Annexure-1) was passed taking into account the finding recorded by the Hon'ble Apex Court in ***Dinbandhu Pandey v. State of Bihar*** (Supra). It is also evident that aforesaid judgment was subject to challenge under L.P.A. No.2021 of 2011 (Annexure-A) under Appellate Jurisdiction and the same was disposed of in a manner as indicated above. So, certainly the judgment of the learned Single Judge has merged with the judgment of the L.P.A. As per High Court Rules, L.P.A. was maintainable against the judgment of single Judge passed under Article 226 of the Constitution of India. Furthermore, it is evident that there happens to be compliance at the end of the contemners relating to the findings so recorded under L.P.A. No.2021 of 2011.

6. At the present moment, it looks pertinent to refer relevant Para of the citation having on behalf of petitioner ***Monnet Ispat & Energy Limited vs. Bihar State Mineral Development***



Corporation through its Managing Director and others reported in 2014(2) P.L.J.R. 584 wherein the subject matter with regard to pendency of review petition filed against the judgment of the Division Bench before the Division Bench, and that happens to be reason behind that the scope of applicability of Contempt of Courts Act was dealt with relating to review petition. For better appreciation same is quoted below:-

*“14. So far the first objection raised by learned counsel for the opposite parties with respect to doctrine of merger and non-maintainability of this petition against the order of the Single Judge is concerned, learned counsel for the opposite parties have relied upon a decision of the Apex Court in case of **Kunhayammed and Others** (supra). In the said decision itself it has been clearly held that doctrine of merger was not of universal or unlimited application and its applicability has to be determined keeping in view the nature of jurisdiction exercised by the forum and the content and subject matter of challenge. It has been further held in the said order that when an order is affirmed by the appellate forum, in such situation application, if filed for review, will have to be filed before the appellate forum*

as the decision of the appellate forum existed for that purpose. However, the contempt is completely a different matter and the court derives its jurisdiction for the said purpose under the Contempt of Courts Act and as such it is completely unaffected by the doctrine of merger.”

7. Herein in the present case, it is crystal clear that no question of review is involved and further, there happens to be no dispute regarding presence of L.P.A. against the judgment of the Single Judge as well as having been disposed of in terms of findings recorded therein. In that event, certainly instant petition for contempt would not survive and is accordingly, dropped.

8. However, it is made clear that petitioner will be at liberty to pursue the matter in accordance with law either to challenge the order dated 15.04.2014 passed under L.P.A. No.2021 of 2011 or the resolution dated 17.10.2013 under appropriate forum.

(Aditya Kumar Trivedi, J)

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