

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1411 of 2016

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1. The Union of India through the Secretary, Ministry of Home, Government of India, South Block, New Delhi.
 2. The Under Secretary, Freedom Fighter Division, Home Ministry, Government of India, Lok Nayak Bhawan, Khan Market, New Delhi.
 3. Keshav Kumar Pathak son of not known the former Joint Secretary, Freedom Fighter Division, Ministry of Home, Government of India, NDCC, 2 Lok Nayak Bhavan, Khan Market, New Delhi.
 4. R.C. Nayak son of not known Former Director, Freedom Fighter Division, Ministry of Home, Government of India, NDCC, 2 Lok Nayak Bhavan, Khan Market, New Delhi.
 5. P.S. Kalra son of not known the Under Secretary, Freedom Fighter Division, Ministry of Home, Government of India, NDCC, 2 Lok Nayak Bhavan, Khan Market, New Delhi.

.... Appellant/s

Versus

1. Umeshwar Prasad Singh @ Umesh Prasad Singh S/o Late Ram Prasad Singh R/o Village - Mounjhouni, P.S. - Rajoun, District - Banka.
2. The State of Bihar through Rajiv Ranjan Sinha son of not known the Special Secretary (Home Special Department), Government of Bihar, Old Secretariat, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr S D Sanjay, ASG I &
Mr Manoj Kumar Singh, CGC

For the Respondent/s : Mr Upendra Pratap Singh, Advocate (AOR 03880)

For the State : Mr Brajesh Kumar, AC to AAG IV

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 16-08-2016

The present intra-Court appeal under Clause 10 of the
Letters Patent has been filed by Union of India being aggrieved by
order dated 20.04.2016 in MJC No 454 of 2015 arising out of CWJC

No 20840 of 2010.



2 In the writ proceedings, the learned Single Judge, by his judgment and order dated 22.08.2014, while allowing the writ petition, directed the Union of India to reconsider the matter for grant of Swatantra Senani pension to the writ petitioner. It appears that pursuant to the aforesaid direction, the matter was reconsidered by the Central Government and an order on 25/26.11.2014 was passed by Government of India in the Ministry of Home Affairs. It appears that by the aforesaid order, once again the claim of the writ petitioner for grant of Swatantra Senani pension was rejected and grounds of rejection were given. For the sake of records, we may note that grounds of rejection this time were different from what was given on the first occasion when the writ petition was allowed. The writ petitioner, being aggrieved by this rejection of the claim, now filed the present MJC No 454 of 2015 for initiating proceedings in contempt against the Union of India for alleged failure to grant the writ petitioner Swatantra Senani pension.

3 Union of India appeared in those contempt proceedings and took the stand that pursuant to the remand order and being order for reconsideration passed in the writ proceedings, Union of India considered the matter and, after giving detailed reasons, rejected the claim. If the writ petitioner was aggrieved, he could take



recourse to law and the procedure established therein to impugn its validity but certainly, no contempt was made out as on remand, considering the merit, orders have been passed. What the learned Single Judge has done by order dated 20.04.2016 passed in MJC No 454 of 2015 against which this LPA has been filed, he has adjudicated upon the correctness or otherwise of the order passed by the Central Government being order dated 25/26.11.2014 and set aside the order, this time, with the direction to grant pension failing which serious view would be taken. It is this, which has brought the Union of India in the intra-Court appeal.

4 Notices had been issued to the private respondent in this appeal, who was the writ petitioner by registered post. Notices having been issued, they have not returned unserved. As such, there is a presumption of notice being validly served. Apart from that, the learned Additional Solicitor General produces before us a copy of order dated 03.08.2016 passed in MJC No 454 of 2015 from which it is clear that in those proceedings clearly it was disclosed to the private respondent (writ petitioner) in the aforesaid contempt application, about pendency of this appeal and it is because of that, the learned Single Judge adjourned the contempt matter. Private respondent has chosen not to appear. Noticing absence of the private respondent will not preclude us in proceeding to dispose of this appeal at this stage

itself.

5 The facts show that in the contempt proceeding, the learned Single Judge, by order dated 20.04.2016, passed an adjudicatory order which is beyond the scope of a contempt application. That power a Judge of the High Court exercises in terms of Article 226 of the Constitution but surely that power is missing from Article 215 of the Constitution. Once an order has been passed by the authorities in purported compliance of orders of this Court, unless mala fide or order being passed in defiance of the writ order is shown, there was hardly any occasion for entertaining a contempt application. Whether that order passed by the authorities is correct or not cannot be a question of adjudication by a Court in seisin of contempt proceedings. An adjudicatory order, with positive directions, can only normally be issued in writ proceedings and not in contempt proceedings. As noticed earlier, in the writ proceedings, the order was not that Swantantra Senani pension has to be granted to the writ petitioner. Order was to reconsider the matter and pass appropriate orders.

6 At this stage, Mr Upendra Pratap Singh, learned counsel intervenes in this proceeding purporting that he had appeared for the writ petitioner and at the appellate stage, and points out that the order of the learned Single in the writ proceedings was that the

order has to be passed in accordance with the Rules. He submits that the order was not passed on remand in accordance with Rules.

7 In this connection, we may only note that whenever an order is to be passed by any Authority whether pursuant to directions of a Court or in consonance of law, as contained in any legislation, it has to be in accordance with law which includes Rules. If an order is passed contrary to law, the remedy is appeal or a challenge, if so advised, in a writ proceeding, but surely that can never be a subject matter of adjudication in contempt jurisdiction. Thus clearly, the learned Single Judge exceeded his jurisdiction under Article 215 of the Constitution in entertaining the contempt application. Once an order, pursuant to the remand order, passed in the writ proceedings had been passed, as noted above, was in accordance with law or not, can only be adjudicated in a proper proceeding but certainly not in a contempt proceeding. In the facts aforesaid, no further positive directions after fresh adjudication, can be issued in contempt proceedings.

8 Thus, in our view, not only is the order dated 20.04.2016, as passed by the learned Single Judge in MJC No 454 of 2015 unsustainable, the contempt application itself was not maintainable.

9 Accordingly, the order dated 20.04.2016 passed by the learned Single Judge is set aside and it is held that the contempt

application itself is not maintainable and is dismissed as such.

10 This appeal is allowed.

11 However, the writ petitioner will have liberty to challenge the order dated 25/26.11.2014 passed by Union of India before appropriate forum, as he may be advised.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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