

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1795 of 2015
IN
Civil Writ Jurisdiction Case No. 15823 of 2014**

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The Bihar State Credit and Investment Corporation through its Managing Director,
Indria Bhawan, 4th Floor, Ram Chandra Singh Path, Patna

.... Appellant

Versus

1. Apic Chemical Pvt. Ltd. having regd. office at Sahdeo Mahto Marg, S.K. Puri, Patna through its Managing Director, Virendra Kumar Singh Son of Sri Kedar Nath Resident of Mohalla - Sahdeo Mahto Marg, S.K. Puri, Police Station S.K. Puri, District - Patna
2. Apurva Kumar Son of Ghanshyam Narayan Pandey Resident of Mohalla - Shivpuri, Police Station S.K. Puri, District - Patna
3. Manju Kumari Wife of Chandra Bhushan Prasad resident of Mohalla - Sahdeo Mahto Marg, S.K. Puri, Police Station - S.K. Puri, District - Patna Ex Director APIC Chemical Pvt. Ltd
4. Sanju Kumari Wife of Ravindra Prasad Singh resident of Mohalla - Sheo Sadan Sindni Ghat, Police Station Hajipur Town, District - Vaishali, Ex - Director APIC CHEMICAL Pvt. Ltd.
5. The State of Bihar through Principal Secretary, Department of Industry, Govt. of Bihar, New Secretariat, Patna
6. The Commissioner, Department of Industry, Govt. of Bihar, New Secretariat, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Nirmal Kumar, Advocate
For the Respondents 1-4: Mr. Aditya Narain Singh, Advocate
Mr. Kundan Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 17-03-2017

Heard learned counsel for the appellant as well as
learned counsel for the private respondents.

Though the Court is not satisfied with the reasons
indicated in the limitation petition for delay of 276 days, but in larger
interest of justice and to test the bonafide of the appeal, the delay is



condoned. I.A. No. 8051 of 2015 is allowed and then the matter is taken up on merits.

Vide order dated 22.09.2014, the writ application of the private respondents was allowed and the decision dated 15.04.2014, which had turned down the request of the private respondent for extending the benefit of O.T.S.-2009, has been quashed. Therefore, the appeal.

From a reading of the order, the facts which emerge are glaring. If some authority wants to be law by himself and steps into the shoes of the higher authority and takes a decision, then the Courts cannot be a mute spectator for such usurpation of power and misuse of authority. The narration of facts, after perusal of the original records and which has been taken note of by the learned single Judge speaks for itself. For ready reference the Court would like to reproduce what the learned single Judge culled out from the original file :

“3. This Court, in fact, in the light of the aforementioned submission, even on last Friday i.e. 19.09.2014, had thought it necessary to peruse the original record of the BICICO, which has been produced today before this Court. From its perusal it is found that the order was passed by this Court on 26.03.2014 directing the BICICO to consider the case of the petitioner for grant of their O.T.S. whereafter



the file for the first time had seen light of the day by way of note of a Dealing Clerk on 15.04.2014, wherein he had recorded as follows:

"Dy. Manager (Legal)

Order passed in MJC No. 5866/2013 (arising out of CWJC No. 2117/2013) by the Hon'ble H/Court in its order dated 26/3/14 are placed for your perusal. The matter was discussed with Sri Nirmal Kr., Advocate and advised to send a reply to the petitioner in light of order passed in MJC as per law within two weeks positively.

This is placed for your perusal and f.n.a.

*Sd (illegible)
15.04.14"*

4. It appears from the noting of the file that on the same day, Mr. B. R. Mandal, Deputy Manager (Law) had passed the following order in the file:

"The undersigned has also discussed with Sri Nirmal Kumar, Advocate for taking further action in the matter. He also suggests that since there is no O.T.S. the representation of the petitioner may be rejected in light of the Hon'ble Court order. Accordingly, the letter is being sent.

*Sd (illegible)
15.04.14"*

5. Admittedly, the impugned order dated 15.04.2014 was issued only on the basis of this aforementioned



consideration by the Dealing Clerk and Deputy Manger (Law).

6. Mr. Rama Nand Jha, Managing Director of BICICO, having appeared in person, has explained that on the day, on which such order was passed by Mr. B.R.Mandal, Deputy Manager, Law, he (Mr. Jha) was in fact not even in Patna so as to give oral approval to the proposed action to the Mr. Mandal. He had submitted that on 15.04.2014 he was on election duty in Orissa and, therefore, the order, in question, was passed without his consent or his knowledge and in fact the matter was also not brought to his notice even for the purposes of *post facto* approval.

7. Thus, the manner in which Mr. B. R. Mandal has functioned, will leave nothing for speculation that had this Court not called for the original file of the BICICO, it could have remained under the impression that the impugned order had been passed by the BICICO, inasmuch as the impugned order reads as follows:

"BICICO Bihar State Credit & Investment Corporation Ltd.

Ref. No. Recov/U/327/15 Dated 15/4/14

To

The Director,
M/s Apic Chemicals (P) Ltd.,
Sahdeo Mahto Marg
S.K.Puri, Patna-800001

Sub: Settlement of dues under OTS-2009

Dear Sir,

This has reference to you letter, received



on 26/8/2013 and subsequent orders of Hon'ble High Court, Patna dtd. 05.08.2013 & 26.08.2013 passed in CWJC No. 2117/2013,1731/2013 and MJC No. 5866 of 2013 (arising out of CWJC No. 2117 of 2013) respectively on the captioned subject.

In this regard we wish to inform you that our OTS-2009 (Term Loan) Scheme had already been ended on 31-03-2011 and OTS -2013 (Term Loan) scheme on 31.12.2013 respectively. It has found in the records that you have not applied/subscribed for settlement of your dues under above OTS scheme within the stipulated period. Hence, BICICO is not in position to consider your representation regarding settlement of dues under OTS-2009 as per law.

Therefore, your representation stands hereby rejected.

Yours faithfully
(B.R.Mandal)
Dy. Manager (A/c)"

8. For the time being, this Court would not go into the correctness of the reasons of the impugned order because this Court would quash the impugned order on account of its being without jurisdiction, passed by an incompetent authority, but at the same time, it would like to make it clear that whenever the BICICO now will consider the case of the petitioners for grant of One Time Settlement, the authority will bear in



mind that the case of grant of O.T.S. to the petitioners was already under consideration way back even in the year 2004 as would appear from the noting of the file at its page 11.

9. This Court, therefore, will only observe that if the case of the petitioner for grant of O.T.S. was pending even in the year 2004, and again for O.T.S.-2009, the same should be considered strictly in accordance with the policy and decision which then an existence in 2004 and 2009 to comply the order of this Court in letter and spirit and if the petitioner qualifies in either of them, due consideration for grant of O.T.S. to the petitioner should be made of course strictly in accordance with law.

10. This writ application is accordingly allowed and the impugned order dated 15.04.2014 is hereby quashed.

11. This Court would also warn Mr. B.R. Mandal to be careful in future and leave it to the discretion of the Managing Director, Mr. Rama Nand Jha to take appropriate disciplinary action against Mr. B.R.Mandal for committing an obvious misconduct in usurping the power of Managing Director of BICICO.

12. The personal appearance of Mr. Rama Nand Jha, Managing Director and Mr. B.R.Mandal, Dy. Manager (Law) of the BICICO is hereby dispensed with.”

Nothing more is required to be observed over and above what the learned single Judge has had to observe with regard to the



manner in which a decision was taken in the organization of the appellant.

The submissions made at the bar on behalf of the appellant trying to overcome the discomfort, which has been faced by the organization because of their own indiscretion, cannot be diluted or ignored.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.03.2017
Transmission Date	N/A

