IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11893 of 2017

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Pramod Singh Son of late Satya Naryan Singh Resident of Jasoiya, P.S. Aurangabad Town, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.12023 of 2017

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Archana Verma wife of Shri Ranjan Verma, Resident of Madanpur, P.S.- Madanpur, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11952 of 2017

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Anita Devi, wife of Shri Uday Kumar Singh, Resident of Aajan, P.O.- Neema Aajan, P.S.- Madanpur, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11997 of 2017

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Pramod Kumar Son of late Ram Sundar Ram Resident of Mastul Barun, P.S. Barun, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.12679 of 2017

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Avinav Kumar Son of Shri Jitendra Prasad Gupta, resident of Rajguru Chowk, bettiah, PS bettiah Town, District-West Champaran, Bettiah

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, West Champaran, Bettiah
4. The Superintending Excise, Bettiah
5. The Certificate Officer, Bettiah

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11902 of 2017

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Rajesh Kumar son of Late Nanhku Yadav resident of Badaukhar Tola, Banbigha, PS Haspura, District - Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11906 of 2017

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Sudhir Kumar son of Sri Bachhelal Prasad resident of Haspura, PS Haspura, District - Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11935 of 2017

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Kumari Nancy Gupta wife of Shri Subhash Kumar, Resident of Pratappur, P.S. Pratappur, District- Chatra, Jharkhand.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintendent of Excise, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.13777 of 2017

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Sanjay Kumar Singh, Son of Shri Raghuwansh Singh, Resident of Village-Manika, P.S. Madanpur, District-Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Aurangabad.
4. The Superintending of Excise, Aurangabad
5. The Certificate Officer, Aurangabad.

.... Respondent/s

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Appearance :

(In CWJC No.11893 of 2017)

For the Petitioner/s : Mr. Satyabir Bharti

For the Respondent/s : Mr. Lalit Kishore -Ag

(In CWJC No.12023 of 2017)

For the Petitioner/s : Mr. Satyabir Bharti

For the Respondent/s : Mr. Vikash Kumar - Sc11
(In CWJC No.11952 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Vikash Kumar-Sc11
(In CWJC No.11997 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Lalit Kishore-Ag
(In CWJC No.12679 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Lalit Kishore-Ag
(In CWJC No.11902 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Lalit Kishore-Ag
(In CWJC No.11906 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Lalit Kishore-Ag
(In CWJC No.11935 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Anil Kumar Sinha - Ga1
(In CWJC No.13777 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti
For the Respondent/s : Mr. Vikash Kumar-Sc11

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 21-09-2017 In the matter of adjustment of outstanding dues with regard to payment of duty under the Excise Act i.e. the license fee and adjustment of the same by recovery from the security amount, the issue was considered by this Court in various cases on 26.07.2017 in C.W.J.C. No. 18598 of 2015 and analogous cases and after considering the principles of law laid down by the Hon'ble Supreme Court in the case of ***V.K. Aashokan Vs. Assistant Excise Commissioner, (2009) 14 SCC 85*** and the observations made by the Supreme Court in para 62 onwards of the aforesaid judgment, the petitions were disposed of

in the following manner:-

> *"Having considered the rival contentions, we find that in these cases merely on the basis of the audit objection received, the impugned action has been taken, but before taking the impugned action neither any show cause notice was given to the petitioners nor were they heard nor the principle of law laid down in the case of V.K. Ashokan(supra) was followed.*
>
> *That being so, we deem it appropriate to remand the matter back to the competent department of the State Government to issue notice to the petitioners, consider their objection, evaluate it in the backdrop of the law laid down in the case of V.K. Ashokan (supra) or any other law as may be applicable and take a decision afresh in accordance with law.*
>
> *Accordingly, we allow all these petitions in part, quash the impugned order and direct the petitioners to appear before the competent authority along with a certified copy of this order and on the same being done, the competent authority shall issue notices to the petitioners proposing the action to be taken against them, grant them opportunity of hearing and for submitting their explanation and thereafter taking note of the principles of law as may be applicable detailed hereinabove, proceed to pass fresh orders in accordance with law. The entire exercise in this regard should be undertaken and completed within a period of two months."*

The petitioners pray for consideration of their claims also for adjustment in identical terms.

Having heard learned counsel for the parties, we see no reason to deny this benefit to the petitioners. These petitions are also disposed of in identical terms as is reproduced hereinabove in the order passed by us on 26.07.2017 in C.W.J.C. No. 18598 of 2015 and other analogous cases. However, we may reiterate that we have not expressed any opinion on the merits of the contentions advanced and it would be for the appropriate authority to take action and decide the issue within a period of two months from the date of receipt/production of a certified copy of this order.

The impugned orders are quashed and action now be taken only after fresh orders are passed. The petitioners are directed to appear before the competent authority along with the certified copy of the order and details of their claims.

With the aforesaid, the applications stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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