

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.70 of 2014

IN

Civil Writ Jurisdiction Case No. 10960 of 2010

- =====
1. The State Of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
 2. The Secretary, Department Of Sugarcane Development, Govt. Of Bihar
 3. The Deputy Secretary, Industry (Cane Development Department), Govt. Of Bihar, Patna
 4. S.B.I. Caps, Financial Advisor, Department Of Sugarcane Development, Govt. Of Bihar, Patna
 5. The Cane Commissioner, Cane Industries Department, Govt. Of Bihar, Patna
 6. The Collector, West Champaran, Bettiah
 7. The Managing Director, Bihar State Sugar Corporation Ltd., New Secretariat, Patna
 8. Deputy Labour Commissioner, Office of the Deputy Labour Commissioner, Muzaffarpur
 9. Excise Superintendent, West Champaran, Bettiah
 10. Magistrate In-Charge-Cum-Block Agriculture Officer, Lauria Distillery, Distt. West Champaran

.... Respondents / Appellants

Versus

1. Sushil Kumar Srivastva S/O Late Brijnandan Prasad Srivastava R/O Vill.- Lauria, Distt.- West Champaran
2. Hulash Gope Son Of Late Bejli Ahir R/O Vill- Parsauna, P.S.- Lauria, Distt- West Champaran
3. Chandrabhushan Prasad S/O Karima Sah R/O Vill- Turhapatti, P.S.- Chanpatia, Distt.- West Champaran
4. Nand Kishore Tiwari S/O Kanhaiya Tiwari R/O Vill- Jawaharipur, P.S.- Lauria, Distt.- West Champaran

.... Petitioners / Respondents

with

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Letters Patent Appeal No. 327 of 2014

IN

Civil Writ Jurisdiction Case No. 15934 of 2007

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
 2. The Secretary, Department of Sugar Cane Development, Government of Bihar, Patna Now Principal Secretary Department of Sugar Cane Industry.

.... Respondents no. 1 & 2 / Appellants

Versus

1. Lal Babu Mishra Son Of Shri Rameshwar Mishra, Resident Of Village Ahirani, Tola Bagaha- 1, P.O. Bagaha P.S. Bagaha- 1, Distt. West Champaran
2. Gagan Singh Son Of Late Mangal Singh Resident Of Village Kuttikacha, P.O.- Siswania, P.S. Lauria, Dist. West Champaran
3. Harihar Sah Son Of Late Paras Sah Resident Of Village Lauria (Mishra Tola), P.O. & P.S. Lauria, Dist. West Champaran
4. Tej Narayan Singh Son Of Shri Malik Singh Resident Of Village & P.O. Siswania, P.S. Lauria, Dist. West Champaran



5. Sunil Kumar Srivastava Son Of Shri Sanwali Sharan Srivastava, Resident Of Village Banuchhapar, P.O. & P.S. Betiya, Dist. West Champaran
6. Raghunath Dixit Son Of Late Gauri Shankar Dixit Resident Of Malahitola, P.O. Dhobini, P.S. Lauria, Dist. W. Champaran
7. Nathu Bhagat Son Of Late Hariha Bhagat Resident Of Village & P.O. Lauria, P.S. Lauria, Dist West Champran
8. Md. Salim Khan Son Of Late Sadim Khan Resident Of Village Suarchhap Pipra, P.O. Birti Matiararia, P.S. Aluria, Dist West Champaran
9. Birendra Kumar Srivastava Son Of Shri Sanchit Prasad Resident Of Village- Mathia, P.S. Lauria, Dist West Champaran
10. Madan Lal Son Of Late Shri Lalan Prasad, Resident Of Village Belwa Nankar, P.O. Dhobini, P.S. Lauria, Distt. West Champaran
11. Ram Bilash Mandal Son Of Shri Moti Mandal, Resident Of Village- Lauria Mill Colony, P.O. And P.S. Lauria, Distt. W. Champaran
12. Ramayan Sharma Son Of Shri Bipat Sharma, Resident Of Village- Ganauli Lohar Toli (Parohara), P.O. Dumra, P.S. Lauria, Distt. West Champaran
13. Devendra Prasad Srivastava Son Of Late Ram Swaroop Lal Srivastava, Resident Of Village- Chharadwali (Basantpur) P.O. Shighpur (Via- Chanparia), P.S. Sathi Distt. West Champaran
14. Chhedi Yadav Son Of Shri Laxman Yadav Resident Of Village Vishunpurva, P.O. Siswania, P.S. Lauria, Distt. West Champaran
15. Mohan Kumar Singh Son Of Shri Ramaji Singh Resident Of Kanhauli, P.O. Kanhauli P.S. Darauli, Distt. Siwan
16. Arvind Kumar Son Of Shri Awadhesh Prasad, Resident Of Village- Maidi Khurd P.O. And P.S. Khudaganj, Distt. Nalanda
17. Shsrinarayan Thakur Son Of Late Banaras Thakur, Resident Of Thakur Tola P.O. Mathia, P.S. Lauria, Distt. W. Champaran
18. Mohan Lohar Son Of Late Chaket Lohar, Resident Of Village Ban Bhawanipur P.O. Jamunia, P.S. Sahodara Distt. West Champaran
19. Lalji Sah Son Of Late Kailash Sah Resident Of Village Shambhuapur, P.O. Jaratiya P.S. Chanpatia, Distt. West Champaran
20. Harilal Sah Son Of Late Khedaru Sah Resident Of Parukiya, P.O. Choubey Tola, P.S. Chanpatia Distt. West Champaran
21. Dhrup Kasera Son Of Swami Nath Kasera, Resident Of Village Lauria, P.O. & P.S. Lauria Distt. W. Champaran
22. Amar Giri Son Of Mukti Giri, Resident Of Village Dubwali, P.O. Lakhanpura, P.S. Lauria Distt. W. Champaran
23. Kishun Chaudhary Son Of Late Ram Prasad Chaudhary Resident Of Village Parobin P.O. And P.S. Lauria Distt. West Champaran
24. Chandrabhan Chaudhary Son Of Late Asharphi Chaudhary Resident Of Village Pakari Nuniatola P.O. And P.S. Lauria Dist. W. Champaran
25. Ravindra Thakur Son Of Late Shri Ambika Thakur, Resident Of Village Belwa P.O. And P.S. Lauria Distt. West Champaran
26. Raghawsharan Thakur Son Of Late Pashuram Thakur Resident Of Village Belwa, P.O. And P.S. Lauria, Distt. West Champaran
27. Ramesh Singh Son Of Shri Satyanarayan Singh Resident Of Village- Marahiya P.O. And P.S. Lauria Distt. West Champaran
28. Ramesh Yadav Son Of Late Bijali Raut Resident Of Parroun, P.S. And P.O. Lauria Distt. West Champaran
29. Nathu Chaudhary Son Of Shudeo Chaudhary Resident Of Pakari Nuniatola, P.O. And P.S. Lauria Distt. West Champaran
30. Sudama Tiwary Son Of Late Amardeo Tiwary, Resident Of Village Turhapatti



- P.O. Turhapatti Lalatola, P.S. Sirisia Dist. W. Champaran
31. Md. Salim Son Of Harif Dewan Resident Of Village Parron, P.O. & P.S. Lauria, Dist. West Champaran
32. Birendra Ahir Son Of Late Mangaroo Ahir Resident Of Village Parron, P.O. & P.S. Lauria, Dist. W. Champaran
33. Dhruv Narayan Singh Son Of Late Shamdeo Singh Resident Of Village Hasanpura, P.O. & P.S. Marhaora, Distt. Chapra, Saran
34. Jagmohan Prasad Son Of Late Mahadeo Sah Resident Of Village, P.O. & P.S. Lauria, Distt. W. Champaran
35. Pramod Kumar Mishra Son Of Shri Shiv Shankar Mishra Resident Of Village, P.O. And P.S. Lauria, Distt. West Champaran
36. Shailesh Kumar Mishra Son Of Late Shri Kanhaiya Mishra Resident Of Village Akhwa Jamunia, P.O. Narkatiaganj, P.S. Shikarpur, Distt. West Champaran
37. Nawal Kishore Shukla Son Of Late Jang Bahadur Shukla, Resident Of Village Lauria Misshra Tola, P.O. And P.S. Lauria Distt. West Champaran
38. Shamlal Sharma, Son Of Late Nathuni Sharma Resident Of Village Lauria Mishra Tola, P.O. & P.S. Lauria Dist. W. Champaran
39. Rampujan Lal Son Of Lajpati Lal Resident Of Village Siswa Bujurg, P.S. Parsa Station, P.S. Shoharat Garh Dist. Sidharth Nagar (U.P.)
40. Prem Kumar Shrivastava Son Of Shri Jang Bahadur Lal Srivastava Resident Of Village & Mohalla Brahmchan P.O. Menhadawal Dist. Sant Kabir Nagar (U.P.)
41. Rameshwar Ahir Son of Late Prasad Ahir Resident Of Village Parron, P.O. & P.S. Lauria, Dist. West Champaran
42. Rajbnshi Yadav Son of Late Muneshwar Yadav Resident Of Village And P.O. Ojha Barwa, P.S. Sanichari (Jogawari), Dist. W. Champaran
- Petitioners / Respondents 1st Party
43. S.B.I. Caps, Financial Advisor, Department Of Sugarcane Development, Government of Bihar, Patna
- Respondent no. 3 / Respondent 2nd party.
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Appearance:

(In LPA No.70 of 2014)

For the Appellant/s : Mr. Suman Kumar Jha, Advocate.
For the Respondent/s : Mr.

(In LPA No.327 of 2014)

For the Appellant/s : Mr. Nirmal Kumar Sinha-3, Advocate.
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 08-03-2018

Challenge in these two intra-court appeals has been made



to the order dated 08.01.2013 passed by the learned Writ Court in CWJC No. 10960 of 2010 and the order dated 13.12.2012 passed in CWJC No. 15934 of 2007 respectively.

2. By virtue of the impugned order(s) in the Writ Applications preferred by the employees of Lauriya Distillery, a unit of S.K.G. Sugar Ltd., it has been directed by the learned Writ Court that the Writ Application of the employees of the Distillery Unit are also allowed with a direction to the State respondents, especially the Chief Secretary, Govt. of Bihar, that he has a duty to put in place an Exit Policy even for the workers of the Distillery Unit within a period of three months from the date of production / communication of a copy of the order, in favour of the distillery workers, i.e., the petitioners, at par with the Exit Settlement Plan, which was put in place for the Sugar Mill workers and provided benefits accordingly.

3. It appears from the records that the first order in respect of the petitioners, who were employees of Lauria Distillery, came to be passed by the Writ Court on 13.12.2012 in 15934 of 2007 by which the Writ Application was allowed with the aforesaid direction. Subsequently, when CWJC No. 10960 of 2010 came to be heard before another learned Writ Court, the same was also considered and disposed of in terms of the direction issued in CWJC No. 15934 of 2007.



4. It is not in dispute that the Distillery Unit was a part and parcel of the Sugar Mill which was in the hand of M/s S.K.G. Sugar Ltd. The State enacted the Bihar Sugar Undertakings (Acquisition) Act, 1976 which provided for acquisition and transfer of certain Sugar Undertakings in the State of Bihar and for matters connected therewith or incidental thereto as per the provision of Section 3 of the said Act. The Undertakings listed in the Schedule stood transferred to and vested in the Govt. of Bihar or a Corporation could have been formed with all the assets, liabilities, rights, titles, interest and obligation, etc. The validity of the Act was under challenge and ultimately it was upheld by the Hon'ble Apex Court. A question was raised by the erstwhile company as to whether the distillery was a part and parcel of the Sugar Mill and whether the distillery vested in the State by virtue of the Acquisition Act or it was a distant entity. The learned Writ Court has referred Paragraphs 27 & 28 of the judgment of the Hon'ble Apex Court in order to take a view on this issue and we are quoting the same hereunder for a ready reference:-

“27. The impugned Act seeks to take over the sugar undertakings including a 'distillery' operated in such undertaking. What is urged before us comes in the teeth of S. 4(4)(ii)(e) and if we correctly understand the scope of this provision, the arguments advanced on behalf of the parties can be truly appreciated and, for that purpose, it is necessary to set out that provision in full which is as follows :-

"Section 4. Certain consequences of vesting.-



(4)(ii) For removal of doubts. It is hereby declared that, save as otherwise expressly provided in this section or in any other section of this Act.-

(e) Notwithstanding any provision in any other law, all the transfer, disposition of properties moveable or immoveable either in part or in whole made after 29th October, 1978 of the scheduled undertaking shall be invalid and stand annulled. The Collector shall take possession of such properties with the properties of the undertaking."

28. Section 4 falls into different parts. The first part is covered by a non obstante clause by which the properties along with encumbrances and to what extent vest in the State and clause (4)(i) covers such a situation. But clause 4(ii) opens with a clause "for removal of doubts, it is hereby declared that, save as otherwise expressly provided in this Section or in any other section of this Act.... and thereafter clause 4(ii) (e) is set out. The opening clause "removal of doubts" does not fit in the non obstante clause with which S. 4(4)(ii)(e) opens. Indeed, the object of S. 4(4)(ii)(e) is evident from the very language employed in that provision which indicates that irrespective of any provision in any other law transfer, disposition of properties moveable or immoveable either in part or in whole made after 29th October, 1978 of the scheduled undertaking shall be invalid and stand annulled and the Collector shall take possession of such properties with the properties of the undertaking. In correctly reading the enactment as a whole what we have to do is to treat this provision as an independent provision which provides for consequences to which we have adverted to, that is, nullification of all alienations effected after 29th October, 1978 of the properties and taking over of the same. That is, because under the prior enactment a notification has been issued on 29-10-1978 to take over the sugar mills under S. 17 of the Act then in force. Therefore, there is definitely a cloud in relation to properties belonging to the sugar undertaking which were sought to be taken over. Not only that day is relevant for the purpose of taking over but also if the



objectives of the Act have to be achieved situations will have to be taken note of which have arisen prior to the date of the enactment and, therefore, it becomes absolutely necessary to make proper provisions to cover such situations. If the said transaction stood nullified the fact that the properties stood transferred to the petitioner on 5-6-1983 will not be of any consequence and that property will have to be treated as the property of the sugar undertaking being taken over under the impugned Act. Therefore, the exercise suggested by the learned counsel as to the restricted construction that has to be placed on the expression 'distillery' in S. 3(1) or S. 4 cannot be accepted. The decisions referred to by the learned counsel cannot be of any assistance on the construction made by us on the provisions of the Act. If on the date of coming into force of the Act, the transactions entered into after 29th October, 1978 stood annulled in respect of the properties that are being taken over, the said properties must be held as still the properties of the sugar undertaking. Thus if the true effect of S. 4(4)(ii)(e) is borne in mind, the distillery of the petitioner must be deemed to be in the ownership, possession, power and control of the undertaking on the appointed day. Hence, we reject the first contention of the learned counsel that the Act has no applicability to the distillery of the petitioner.”

5. The learned Writ Court has taken note of the fact that by virtue of cabinet approval an Asset Transfer Agreement along with a kind of Lease Deed was executed with the companies that made a successful bid for the units. Lauria Distillery along with Sugauli was transferred to a Public Sector Undertaking, known as Hindustan Petroleum Corporation Limited (HPCL). In order to facilitate the said HPCL, the State Cabinet with approval from the Law Department worked out an Exit Policy for the employees of the erstwhile Sugar



Mills. In fact, a Golden Handshake was offered to the employees related to the Sugar Mills, however, the employees of the Distillery Unit were left in lurch. A final shape to the Exit Policy offered to the employees of the Sugar Mills was given and funds were also released by the State Govt. but it did not include workers of the distillery.

6. In the aforementioned circumstance, the workers of the Distillery Unit approached this Court and the learned Writ Court found that the case of the employees of the Distillery Unit cannot be distinguished with that of the case of the employees of the Sugar Mill.

7. Having found no distinguishable feature and then taking note of the fact that the Distillery Unit was a part and parcel and, in fact, integral to the Sugar Mill, the learned Writ Court has provided for same benefits to the employees of the Distillery Unit.

8. On behalf of the appellants, a contention has been raised that in fact the Distillery unit was taken over only on 18.02.2003 and on the date of the possession the Distillery Unit was already locked out. Learned counsel submits that the acquisition of the distillery at Hathua was challenged by the United Distilleries Private Ltd. through Civil Misc. Petition No. 2748 of 1986 in Writ Petition No. 83 of 1986 in the Hon'ble Apex Court and vide order dated 07.02.1986 in the said Writ Petition the Hon'ble Apex Court stayed the acquisition process of the distillery at Hathua till further order and due to above



mentioned stay order both the distilleries at Hathua and Lauria remained under the control and operation of the United Distilleries Private Ltd. and S.K.G. Sugar Ltd. respectively till 18.02.2003. It is also pointed out that the S.K.G. Sugar Ltd. owned two distilleries at Hathua and Lauria and three sugar factories at Hathua, Lauria and Siwan. It is, however, admitted by learned counsel for the State (appellants) that by the enactment known as Bihar Sugar (Acquisition) Ordinance, 1985 of the three sugar mills of S.K.G. Sugar Ltd., namely, Lauria, Hathua and Siwan along with the two distilleries at Lauria and Hathuwa were acquired by the Govt. of Bihar vide the First Schedule.

9. The only submission of the learned counsel representing the appellants is because the distillery was locked out by the ex-management some time from 20.08.2002, the Hon'ble Apex Court upheld the validity of Take Over Act on 18.02.2003, no liability for the period prior to 18.02.2003 may be fastened on the appellants.

10. On the other hand, learned counsel representing the workmen/employees of the Distillery Unit submits that the acquisition of the Distillery Unit has been done under the same enactment of the State Government whereunder the three Sugar Mills of S.K.G. Sugar Ltd. at Lauria, Hathuwa and Siwan were taken over. Learned counsel submits that all the three mills and two distilleries formed integral part



of the acquisition by the State Govt., therefore, no distinction can be made in case of the employees of the mills and that of the employees of the Distillery Units. It is submitted that the State having acquired the assets of the undertaking cannot be allowed to deny the liability. A reference in this regard has been made to Section 4 of the relevant Act by which the mills and the Distillery Unit were acquired by virtue of which the company owning the schedule undertakings shall be liable to pay the liability of the schedule undertakings only for the period prior to the appointed date. By virtue of Section 3, on the appointed date, the schedule undertakings specified in the Schedule shall stand and be deemed to have stood transferred to and vested in the State of Bihar. The appointed date, as been defined under Section 2, means the date on which the ordinance came into force. It is, therefore, the contention of the private respondents that the State fixed two dates for purpose of calculation of the liability in respect of the mills employees and that of the distillery employees. Any such distinction, according to the learned counsel representing the private respondents, would be a case of hostile discrimination.

11. We have heard learned counsel for the parties and perused the records. In view of the undisputed fact that the three mills and two distillery units of the erstwhile S.K.G. Sugar Ltd. were taken over by the State Govt. with effect from the date of coming into force



of the Bihar Sugar Undertakings (Acquisition) Ordinance, 1985, no distinction can be made in respect of the benefits to be conferred upon the employees of the mills and the Distillery Units. The contention of the learned counsel for the appellant that there was a lock out declared by the management prior to 18.02.2003 and the said lock out has been held to be justified will have no significance in the opinion of this Court because during the lock out period the relationship of employer and employee does not cease to exist. In the facts of the present case where the acquisition of the mills and the distillery units were challenged by M/s United Distilleries and the said challenge went upto the Hon'ble Supreme Court from where the validity of the Act was ultimately upheld on 18.02.2003, the private respondents cannot be held liable for either lock out or the delay in the litigation which travelled upto the Hon'ble Apex Court.

12. The State Government has provided an Exit Policy to the employees of the mills and the learned single Judge having considered the entire materials came to a conclusion that the employees of the distillery unit would also be entitled for the same benefits which have been conferred to the employees of the mills, we find no reason to interfere with the order of the learned Writ Court. Both the Writ Applications have been rightly allowed with the following conclusions reached by the learned Writ Court which we



take note of as under:-

“The decision, conduct or policy of the State smacks of arbitrariness or irrationality. Therefore, the writ application is allowed with a clear direction upon the respondents, especially the Chief Secretary, Government of Bihar that he has a duty to put in place an Exit Policy even for the workers of the Distillery Unit within a period of three months from the date of production/communication of a copy of this order, in favour of the Distillery workers i.e. the petitioners, at par with the Exit Settlement Plan, which was put in place for the Sugar Mill workers and provide benefits accordingly.”

“This Court has to remind the State authorities that the Preamble of the Constitution has not undergone any change in so many years despite several amendments to the Constitution and we still continue to be a sovereign, socialist, secular democratic republic and the State is bound to secure Justice, social, economic and political as well as equality of status and opportunity.”

13. The Letters Patent Appeals are devoid of any merit.

Both the appeals are dismissed accordingly.

14. The order of the learned Writ Court must be complied with within a period of three months from today, failing which it will be viewed seriously by this Court.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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