

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.165 of 2011

In
Letters Patent Appeal No.230 of 2011

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1. The State of Bihar
 2. The Commissioner cum Secretary, Health Department, Govt. of Bihar, Patna
 3. The Director-in-Chief, Health Services, Bihar, Patna
 4. The Additional Director, Health Services, Family Welfare, Bihar, Patna
 5. The Regional Deputy Director, Health Services, Darbhanga/ Civil Surgeon-cum-Chief Medical Officer, Samastipur
 6. The In-charge Medical Officer, Primary Health Centre, Patori, District Samastipur

... .. Petitioners

Versus

Binay Kumar Singh, son of Sri Awadh Bihari Singh, resident of village Kurpat, Post Office Parghori, P.S. Sabour, District Bhagalpur

... .. Respondent

with
Miscellaneous Jurisdiction Case No. 3339 of 2018
In
Letters Patent Appeal No.198 of 2015

Dewashish Ghosh, Son of Late Anil Chandra Ghosh, Resident of Village-Rasiyari, Police Station- Ghanshyampur, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar, Through The Chief Secretary, Govt. of Bihar, Patna.
2. Sri R.K. Mahajan, Son of not known, The Principal Secretary, Health Department, Bihar, Patna.
3. Dr. C.M. Jha, Son of not known, The Director in Chief, Health Services, Bihar, Patna.
4. Dr. Amar Nath Jha, Son of not known, The Civil Surgeon cum Chief Medical Officer, Madhubani.

... .. Opp.Parties

Appearance :

(In Civil Review No. 165 of 2011)

For the Petitioner/s : Mr. Chittranjan Sinha, PAAG-2

For the Respondent/s : Ms. Ratna Kumari, AC to PAAG-2

(In Miscellaneous Jurisdiction Case No. 3339 of 2018)

For the Petitioner/s : Mr. Prafull Chandra Jha, Adv.

For the Respondent/s : Mr. S. D. Yadav, AAG- 9



CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-12-2018

Heard Mr. S.D.Yadav, learned AAG-9, for the State and Mr. Prafull Chandra Jha, learned counsel for the writ petitioners.

While the State in the review application prays for review of the judgment and order passed by the Division Bench in L.P.A.No. 230/2011 (**The State of Bihar & ors. v. Binay Kumar Singh**) which has since been reported in 2011(3) PLJR 547, the contempt application arises from the order passed by a Division Bench in L.P.A.No. 198/2015 which was disposed of in the light of the order passed in L.P.A.No. 1518/2010 and analogous cases. All these appeals find their roots and arise from the order of a learned Single Judge rendered in C.W.J.C.No. 6575/2009 (**Om Prakash vs. the State of Bihar & ors.**) which was heard analogous with a number of other writ petitions including those which are subject matter of the present dispute. The judgment passed by the learned Single Judge is reported in 2009(4) PLJR 690.

Adverting to the review application filed on behalf of the State, we find that the sole ground raised by the State seeking review of the judgment and order of the Division is because there was an earlier judgment of a Division Bench since reported in



2010(2) PLJR 397 (**The State of Bihar & ors. v. Sohan Roy**) which ran counter to the opinion expressed by the Division Bench in the judgment under review. We make it clear that we would have dismissed the review application if this would have been the sole ground for seeking review because if the judgment in the case of **Sohan Roy** (supra) covered the case in hand, it should have been placed before the bench at the appropriate stage and not as an after thought. Having observed thus we find some subsequent developments which have taken place in the matter and which bears relevance to the issue put up for consideration.

A Division Bench of this Court while considering some other appeals arising from the judgment and order of the learned Single Judge in the case of **Om Prakash** (supra) vide judgment reported in 2015(2) PLJR 378 (**The State of Bihar through the Chief Secretary & ors. v. Madhu Kumari**) at paragraph-28 of the judgment has held that the judgment of the Division Bench rendered in the case of **Binay Kumar Singh** (supra) is no longer a good law in view of the Full Bench judgment of this Court rendered in the case of **Ram Sevak Yadav vs. the State of Bihar & ors.**, since reported in 2013(1) PLJR 964, which judgment in turn relies upon the Constitution Bench judgment of the Supreme



Court rendered in the case of **Secretary, State of Karnataka & ors. vs. Uma Devi**, since reported in (2006)4 SCC 1.

The developments do not stop here rather the State feeling aggrieved by the divergent opinion expressed by this Court on different set of appeals moved the Supreme Court by filing Special Leave Petitions which on being allowed were registered as Civil Appeal No. 8649/2018 which was heard analogous with a number of Civil Appeals, all going from this Court and we note that it is the issue which initiated from the judgment of the learned Single Judge in C.W.J.C.No. 6575/2009 (**Om Prakash vs. the State of Bihar & ors.**) referred to above, which was put for consideration before the Supreme Court in the light of the opinion expressed by different Division Benches. The Supreme Court vide its judgment and order dated 30.11.2018 has allowed the Civil Appeals preferred by the State of Bihar and the Civil Appeals preferred by the writ petitioners feeling aggrieved by the dismissal of their Letters Patent Appeal, were dismissed.

In our opinion, the authoritative pronouncement made by the Supreme Court in the batch of appeals on examination of the views expressed by the Division Bench of this Court allowing the Letters Patent Appeal of the writ petitioners as well as the orders passed in favour of the State in other Appeal(s), to uphold



the stand of the State to allow their appeals and dismiss the appeals of the writ petitioners, becomes a relevant factor for the contest herein because the finality attached to the issue by the Supreme Court puts at rest not only to the issue canvassed by the State through the review application but also the application filed by the writ petitioners in Contempt Jurisdiction.

Mr. Jha, learned counsel representing the petitioners, has been rather serious in placing reliance upon the order dated 7.10.2013 of the Supreme Court passed on SLP Civil No. of 2013 (CC No. 17435 of 2013) (**State of Bihar & ors. vs. Birendra Prasad Singh**) arising from the judgment and order passed in L.P.A.No. 1541/2010, dismissing the appeal, which according to Mr. Jha is the foundation for the contempt application because it is in the light of the order passed in LPA No. 1541/2010 that the Letters Patent Appeal of the appellant had been disposed of but the law on the issue stands long well settled and the principle of merger would not apply in a matter where the Special Leave Petition was dismissed summarily by the Supreme Court.

In our opinion, in the nature of the order so passed by the Supreme Court in the case of **Kirti Narayan Prasad** (supra) we are satisfied to note that both the civil review application as



well as the contempt application have been rendered academic and are disposed of accordingly.

At this stage Mr. Jha submits that there are some other appeals, which are yet pending in the Supreme Court.

In our opinion, in view of the authoritative pronouncement in the case of **Kirti Narayan Prasad** (supra) the issue has been put at rest but having observed thus, we grant liberty to the petitioner to move afresh in case the situation changes in future by orders passed on the appeals, yet pending before the Supreme Court.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Surendra/-

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