

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.177 of 2018

IN

Civil Writ Jurisdiction Case No. 2767 of 2011

- =====
1. The Chairman, Bihar State Construction Corporation Ltd., Patna.
 2. The Managing Director, Bihar State Construction Corporation Ltd., Anisabad, Patna.
 3. The Financial Advisor, Bihar State Construction Corporation Ltd., Anisabad, Patna.
 4. Accounts Officer, Bihar State Construction Corporation Ltd., Anisabad, Patna.

.... Appellant/s

Versus

1. Ishwar Chandra Sharma Son of Sri Krishan Sharma, Permanent Resident of Village-Ahaladpur P.O.-Haridaspur, P.s.-Kanti, District-Muzaffarpur.
2. The State of Bihar
3. The Secretary, Department of Water Resources, Government of Bihar Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s :Mr. Harshvardhan Shivsundaram, Adv.
For the Respondent/s:Mrs. Anju Mishra, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 08-10-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.01.2018 passed by the learned Single Judge passed in C.W.J.C. No. 2767 of 2011, the original respondent Nos. 4 to 7 have preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

2. The facts leading to the present



Letters Patent Appeal, in nutshell, are as under;

2.1. That the private respondent, herein,- original writ petitioner was an employee of Bihar State Construction Corporation Limited. That the original writ petitioner approached this Court by way of C.W.J.C. No. 2767 of 2011 against the appellants herein, and others for payment of arrears of salary etc. which, according to him, was to the extent of Rs. 14,99,950/-. That before the learned Single Judge, the original writ petitioner had relied upon the decision of another learned Single Judge in the case of ***Bihar State Ardh Sarkari Arajpati Karamchari Maha Sangh Vs. The State of Bihar & Ors. (C.W.J.C. No. 21893 of 2011)***, which came to be confirmed by the Division Bench.

2.2. Before the learned Single Judge, it was the case on behalf of the original writ petitioner that some of the employees of the Corporation had been paid their dues taking care of their bad conditions and who were also facing some medical issues in relation to their family members. It was the case on behalf of the original writ petitioner that therefore, the original writ petitioner shall be entitled to get wages/arrears of salary. That by the impugned judgment and order, the learned Single Judge has allowed the said writ petition and has directed the Finance



Department, Government of Bihar to make necessary arrangement of funds, if not already made, based on the recommendations of the Managing Director of the Corporation and the same shall be made available to the Managing Director of the Corporation and thereafter, the Managing Director of the Corporation shall make payment to the petitioner within a week from the date of receipt of the amount from the Finance Department, Government of Bihar.

3. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the original respondent No.4, The Chairman, Bihar State Construction Corporation Ltd. and others have preferred the present Letters Patent Appeal.

4. Sri Harshvardhan Shivsundaram, learned Advocate has appeared on behalf of the appellants-original respondents and Smt. Anju Mishra, learned Advocate has appeared on behalf of the original writ petitioner-private respondent herein.

5. Sri Harshvardhan Shivsundaram, learned counsel appearing on behalf of the appellants-original respondents has vehemently submitted that as such, after the impugned judgment and order passed by the learned Single Judge, there are changed circumstances. However, it is submitted that as such, the Corporation has almost become defunct as no activity is being performed. It is further submitted that today,



the position is that the Corporation itself has moved before the National Company Law Tribunal, Kolkata Bench, for liquidation by way of Company Petition No. 720 of 2017. It is further submitted that in the application under Section 10 of the Insolvency and Bankruptcy Code, 2016, process has been already initiated and publication has also been made. It is further submitted that even the Union/Employee's Union have also appeared in the case before the National Company Law Tribunal, Kolkata Bench. It is further submitted that, therefore, in view of the changed circumstances and as the matter is now *subjudice* before the National Company Law Tribunal, Kolkata Bench and even as per the Law/Statute, all claims, including that of the employees, which shall be the first charge on the Corporation, have to be considered and adjudicated by the National Company Law Tribunal, Kolkata Bench.

5.1. Sri Harshvardhan Shivsundaram, learned counsel appearing on behalf of the appellants-original respondents has further submitted that recently by the order dated 06.09.2018 after taking note of the proceedings before the National Company Law Tribunal, the learned Single Judge has disposed of the said writ petitions with liberty to the petitioners (employees of the Corporation), either to intervene in the said proceedings pending



before NCLT or to wait for the outcome and take appropriate steps, in accordance with law, before the appropriate forum.

5.2. Making above submissions and in view of the changed circumstances, it is requested to allow the present Letters Patent Appeal and to relegate the original writ petitioner to approach the National Company Law Tribunal, by further submitting that, if any, payment is made to the petitioner, in that case, it can be said to be contrary to the statute, more particularly Insolvency and Bankruptcy Code, 2016 and it can be said to be a preferential payment, which is not permissible now.

6. Smt. Anju Mishra learned counsel appearing on behalf of the original writ petitioner has vehemently opposed the present Letters Patent Appeal.

6.1. Smt. Anju Mishra learned counsel appearing on behalf of the original writ petitioner has vehemently submitted that the financial and medical conditions of the original writ petitioner and his family members are bad and they need immediate help. It is submitted that as such, it is the liability of the State of Bihar also to make payment of arrears of salary of the original writ petitioner and other employees. It is submitted that therefore, despite other remedy available to the original writ petitioner, as observed by the learned Single Judge in



C.W.J.C. No. 16586 of 2016 and other allied writ petitions, it is requested to consider the case of the original writ petitioner as a special case.

6.2. Smt. Anju Mishra learned counsel appearing on behalf of the original writ petitioner has heavily relied upon the several decisions of the Hon'ble Supreme Court in support of her prayer to dismiss the present appeal and direct the appellants herein, to make payment of arrears of salary to the original writ petitioner forthwith. She has relied upon the decision of the Hon'ble Supreme Court in the case of ***Kapila Hingorani vs. State of Bihar***, reported in ***2003 (6) SCC 1*** and in the case of ***State of Jharkhand and another vs. Harihar Yadav & Ors.*** reported in ***2014 (2) SCC 114***.

7. Heard the learned counsel appearing on behalf of the respective parties at length.

7.1. At the outset, it is required to be noted that the case of the original writ petitioner is required to be considered sympathetically as is being pointed out by the learned counsel appearing on behalf of the original writ petitioner. However, it is required to be noted that there are number of employees who are waiting for their dues like the original writ petitioner. Other similarly situated employees approached this Court with the similar prayer/reliefs and after taking



note of the proceedings before the National Company Law Tribunal, Kolkata Bench and the provisions of the Insolvency and Bankruptcy Code, 2016, the learned Single Judge has disposed of the said writ petition by relegating the petitioners to approach the National Company Law Tribunal, Kolkata Bench or to wait for the outcome of the proceeding before the learned Tribunal.

7.2. It is not in dispute that now the insolvency proceedings are pending before the National Company Law Tribunal, Kolkata Bench and the National Company Law Tribunal, Kolkata Bench is seized with the matter. As per the provisions of Law/Statute, more particularly, Insolvency and Bankruptcy Code, 2016, now, all the claims, including that of the employees, shall have to be considered by National Company Law Tribunal alone, therefore, any payment now to the original writ petitioner with respect to his dues, can be said to be a preferential payment over the dues of the other similarly situated employees.

8. Now, so far as the reliance placed on the decisions of Hon'ble Supreme Court on behalf of the original writ petitioner in the cases of ***Kapila Hingorani (supra)*** and ***State of Jharkhand and another (supra)*** are concerned, there cannot be any dispute with respect to the proposition of law laid down by the Hon'ble Supreme Court in the said decisions.



However, in view of the changed circumstances referred to hereinabove, and now the proceedings are pending before the National Company Law Tribunal, Kolkata Bench and considering the provisions of statute/law referred to hereinabove, the said decisions shall not be applicable to the facts and circumstances of the case on hand. If so advised, the original writ petitioner may approach the National Company Law Tribunal, Kolkata Bench and point out special case for out of turn payment, which can be considered by the learned Tribunal, and the Tribunal may pass appropriate order in accordance with law.

9. In view of the above and for the reasons stated above, and in view of the changed circumstances referred to hereinabove, present Letters Patent Appeal is **Allowed** and the impugned judgment and order passed by the learned Single Judge is, hereby, quashed and set aside with liberty to the original writ petitioner, either to intervene in the said proceedings before the National Company Law Tribunal, Kolkata Bench or to wait for the outcome and then take appropriate steps, in accordance with law, before the appropriate forum. It will be open for the original writ petitioner to submit an appropriate application before the National Company Law Tribunal, Kolkata Bench for payment of his dues pointing out the special circumstances,



and the learned Tribunal may consider the same, in accordance with law, for which we have not expressed anything in favour of any party.

10. With this, the present Letters Patent Appeal is allowed to the aforesaid extent. No cost.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2018
Transmission Date	

