

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1165 of 2015

In
Civil Writ Jurisdiction Case No.21148 of 2013

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1. Mrs. Vandana, Wife of Late Om Prakash Kumar,
 2. Ms. Ameya Chaurasia, daughter of Late Om Prakash Kumar under the Guardianship and her natural mother namely Mrs. Vadana, wife of Late Om Prakash Kumar

Both resident of Brahm Anju Vila, Back of Poonam Gas Godown, Ambika Vihar, Ambedkar Path, P.S. - Rupaspur, District - Patna.

... .. Appellant/s

Versus

1. The Indian Oil Corporation through its Chairman -cum-Managing Director, G/9, Ali Yadav, Jung Marg, Barolia (East), Mumbai
2. The Chairman cum - Managing Director, Indian Oil Corporation, G/9, Ali Yadav, Jung Marg, Bandra (East), Mumbai
3. The General Manager (HR) NRO Northern Region, Indian Oil Bhawan, Yusuf Sarai, New Delhi.
4. The General Manager, (Delhi State Office), Indian Oil Corporation Ltd., World Trade Centre, Barakhambha Road, Babar Road, New Delhi
5. The Chief Divisional Retail Sales Manager, (Delhi State Office), Indian Oil Corporation World Trade centre, Barakhambha Road, Babar Road, New Delhi
6. Shashi Kumar, Son of Late Bhuvneshwar Modi,
7. Bharat Kumar, Son of Late Bhuvneshwar Modi,
8. Mahesh Kumar, Son of Late Bhuvneshwar Modi,
9. Prabhash Kumar, Son of Late Bhuvneshwar Modi

All resident of Road No. 4, Adarsh Colony, Nayachak, P.O. - Manoharpur Kachuara, P.S. - Ramkrishna Nagar, District - Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.J S Arora, Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha, Advocate Mr. Neel Kamal, Advocate



CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 15-05-2019

Heard Mr. Jashawir Singh Arora, learned counsel appearing for the appellant, Mr. Ankit Katriar for the Indian Oil Corporation and Mr. Neel Kamal, learned counsel representing respondent nos. 6 to 9.

Counter affidavit is being filed on behalf of the private respondents, let it be taken on record.

This appeal arises from a judgment and order dated 30.01.2015 passed in CWJC No. 21148 of 2013 to the extent that the writ court while allowing the writ petitioner to withdraw the writ petition to enable them to pursue their civil law remedy in terms of the observations present in the order of the Division Bench in LPA No.1413 of 2014, has proceeded to impose restraint on the right of the petitioner to deal with the corpus of Rs.50 lakhs paid by the Indian Oil Corporation (hereinafter referred to as 'the Corporation') under the Tatkal Sahayta Yojna which had been remitted to the bank account of the petitioners as back as on 26.11.2013 as manifest from Annexure -R/3 to the counter affidavit of the Corporation filed



in the writ petition.

The only issue which falls for consideration is whether the learned Single Judge was correct in imposing a caveat while allowing the petitioners to abide by the decision of the Division Bench especially where this remittance under the Tatkal Sahayta Yojna to the petitioners, was not a subject matter of consideration before the Writ Court. There is again nothing on record to show whether any steps were taken by the respondent Corporation either to withdraw this money from the appellant-writ petitioners or by the private respondents to question this remittance on its merits.

The facts on record reflects that the remittance under the Tatkal Sahayta Yojna was made on 26.11.2013. Since the other retiral benefits were being denied that the writ petition was filed seeking direction to the authorities of the Corporation for making payment of the retiral benefits as found admissible to the deceased employee. It is at this stage that an issue of production of succession certificate came to surface and the matter travelled up to the Division Bench in LPA No. 1413 of 2014 where the appellants sought permission to withdraw the appeal for obtaining the succession certificate. It is taking note of the submission so made that the Division Bench allowed the



writ petitioners who were appellants before the Division Bench in LPA No. 1413 of 2014, to make appropriate application for withdrawal of the writ petition for obtaining a succession certificate.

We are conscious of the fact that an interim order passed by the learned Single Judge dated 17.09.2014 putting similar restraint was put to question in LPA No. 1413 of 2014 and was permitted to be withdrawn with a liberty to file appropriate application for withdrawing the writ petition itself in order to obtain the succession certificate. We are also conscious of the relief prayed for by the petitioners in the writ petition which sought a direction to the respondents to make payment of the entire death-cum-retirement benefit as found admissible to the husband of petitioner no.1 and father of petitioner no. 2. The private respondents herein are brothers of the deceased employee claiming a share in the benefits admissible to the deceased employee.

A voluminous counter affidavit is filed before this Court and Mr. Neel Kamal with reference thereto attempts to obstruct the prayer made by the writ petitioners before this Court to question the order of the learned Single Judge in so far as it imposes restraint on the petitioners to deal with the corpus



made available under the Tatkhal Sahayta Yojna. As we have noted above, no grievance was raised either by the Corporation or the private respondents before any competent authority, or court of law, on the remittance in question except while opposing the writ petition on the payment of the balance amount of the retiral benefits. We completely fail to appreciate the opposition canvassed by Mr. Neel Kamal for two reasons namely:- (a) the failure of the private respondents to question the remittance by the Corporation under the Tatkhal Sahayta Yojna before a competent court of law; and (b) the exercise of jurisdiction by the learned Single Judge to issue restraint even when the payment under the Tatkhal Sahayta Yojna was not amongst the relief claimed by the writ petitioners. In our considered opinion, the learned Single Judge has committed an error in issuing the restraint order simply because of the opposition coming from the private respondents who never chose to question such remittance either before the authority or before this Court independent of the writ petition filed by the appellants herein.

Having expressed our respectful disagreement with the order passed by the learned Single Judge in so far as it restrains the appellants-writ petitioners to deal with the corpus



of Rs.50 lakhs received by them under the Tatkal Sahayta Yojna,
we set aside that part of the order and consequentially the order
passed on the writ petition stands modified to that extent.

The appeal is allowed to the extent above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

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