

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1831 of 2016

In

Civil Writ Jurisdiction Case No.3414 of 2016

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1. The State Of Bihar through Principal Secretary, Food & Civil Supply and Commerce Department, Government of Bihar, Patna.
 2. The Principal Secretary, Food and Civil Supply and Commerce Department, Government of Bihar, Patna.
 3. The Collector-cum-District Magistrate, Gopalganj.
 4. The Sub Divisional Officer, Gopalganj.

... .. Appellants/respondents

Versus

1. M/s Satyadeo Tiwari Wholesale Dealer Kerosene Oil and Ors Katya P.S.- Katya, Distt.- Gopalganj.
2. Ambika Saran Tripathi S/o Ashok Tiwari Resident of Village- Beloura, P.S.- Katya, District- Gopalganj.
3. Ashish Kumar Tiwari S/o Late Akhilesh Tiwari Resident of Village- Beloura, P.S.- Katya, District- Gopalganj.

Respondents/petitioners

4. The Indian Oil Corporation Ltd., through Sr. Divisional Manager, Block A, Mauryalok Complex, 3rd Floor Dakbunglow Road, Patna-1
5. The Sr. Divisional Manager SDRSM, Indian Oil Corporation, Marketing Division, Block A, Mauryalok Complex, 3rd Floor, Dakbunglow Road, Patna-1.

.....respondents/respondents

... .. Respondent/s

with

Letters Patent Appeal No. 1819 of 2016

In

Civil Writ Jurisdiction Case No.8020 of 2016

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1. The State Of Bihar through Principal Secretary, Food & Civil Supply and Commerce Department of Bihar, Patna.
 2. The Principal Secretary, Food and Civil Supply and Commerce Department of Bihar, Patna.
 3. The Collector - Cum - District Magistrate, Sitamarhi
 4. The Sub - Divisional officer, Sitamarhi

... ..Respondent nos. 1 to 4- Appellant/s

Versus

1. M/s Nagdeo Traders, SKO, dealer of Indian Oil Corporation, Sonbarsa, District Sitamarhi.



2. Amrendera Nath
3. Bhupendra Nath
4. Vijendra Nath
Sl. nos. 2 to 4 are sons of Late Devendra Prasad Yadav resident of Sonbarsa, Police Station Sonbarsa and District Sitamarhi and are Partners of M/s Nagdeo Traders, Sonbarsa, Sitamarhi
.....petitioner nos. 1 to 4-Respondents 1st Set.
5. The Indian Oil Corporation Ltd., through Sr. Divisional Manager, Block - A, Mauryalok Complex, 3rd Floor, Dak Banglow Road, Patna-1
6. The Sr. Divisional Manager SDRSM , Indian Oil Corporation, Marketing Division, Block-A, Maurya Lok Complex, 3rd Floor, Dak Banglow Road, Patna-1.

...Respondent nos. 5 and 6-Respondents IInd Set
... Respondent/s

with
Letters Patent Appeal No. 1845 of 2016
In
Civil Writ Jurisdiction Case No.7956 of 2011

1. The State Of Bihar
2. The District Magistrate, Nalanda.
3. The Sub Divisional Officer, Rajgir, Nalanda.
4. The Block Supply Officer, Rajgir, Nalanda.

... .. Appellant/s

Versus

1. Raj Shekhar Kumar S/O- Late Sidheshwar Paswan, resident of Salempur, Police Station- Sarai, District- Nalanda.
2. Shekhar Agarwal, S/O- Late Sidheshwar Paswan, resident of Salempur, Police Station- Sarai, District- Nalanda.
3. The M/s. Lucky Oil Distributar, Rajgir, District- Nalanda.
..... respondent/petitioners
4. The Indian Oil Corporation Limited through Senior Divisional Manager, Block-A, Maurya Lok Complex,
5. Senior Divisional ManagerSdsrm, Indial Oil Corporation Marketing Division, Block-A, Maurya Lok Complex, 3rd Floor, Dak Banglow Road, Patna-1.
.....respondents/respondents

... .. Respondent/s

with



Letters Patent Appeal No. 258 of 2019
In
Civil Writ Jurisdiction Case No.8172 of 2016

1. The State of Bihar through the Principal Secretary, Food and civil Supply and Commerce Department, Govt. of Bihar, Patna
2. The Principal Secretary, Food and civil Supply and Commerce Department, Govt. of Bihar, Patna
3. The Collector-cum-District Magistrate, Sitamarhi
4. The Sub.Divisional Officer, Sitamarhi

... .. Appellant/s

Versus

1. M/s Hazarimal Khemchand, Bairgania through its Proprietor Ganesh Kumar Agarawal and Ors S/o Late Hazirimal Khemnachand, R/o Bairgania, P.S. Bairgania, Dist.-Sitamarhi.
.....respondent/petitioner
2. The Indian Oil Corporation Ltd. through Sr. Divisional Manager, Block-A, Mauryalok Complex, 3rd Floor Dak Bunglow Road, Patna-1
3. The Sr. Divisional Manager, Indian Oil Corporation Marketing Division, Block-A, Mauryalok Complex, 3rd Floor Dak Bunglow Road, Patna-1.

... .. Respondents/respondents

Appearance :

(In Letters Patent Appeal No. 1831 of 2016)

For the Appellant/s : Mr. Pawan Kumar AC to AG
For the Respondent/s : Mr. Anil Kumar Jha, Sr. Adv Mr. N.K. Agrawal, Sr. Adv, Mr. Dhananjay Nath Tiwari, Adv, Mr. Anil Kumar Jha, Sr. Adv & Mr. Sanat Kumar Mishra, Adv

(In Letters Patent Appeal No. 1819 of 2016)

For the Appellant/s : Mr. Pawan Kumar AC to AG
For the Respondent/s : Mr. N.K. Agrawal, Sr. Adv, Mr. Dhananjay Nath Tiwari, Adv

(In Letters Patent Appeal No. 1845 of 2016)

For the Appellant/s : Mr. Pawan Kumar AC to AG
For the Respondent/s : Mr. Prakash Chandra Jha, Adv

(In Letters Patent Appeal No. 258 of 2019)

For the Appellant/s : Mr. Gyan Prakash Ojha GA-7 & Mr. Gopal Krishna, Adv
For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 17-12-2020

Heard learned counsel for the parties.

Three writ petitions being CWJC No. 3414 of 2016 (Satyadeo Tiwari Vs. State of Bihar & Ors), CWJC No. 8020 of 2016 (M/s Nagdeo Traders Vs. State of Bihar) and CWJC No. 8172 of 2016 (M/s Hazarilal Khemchand Bairgania Vs. State of Bihar) were heard and disposed of by a common order dated 26.05.2016 by learned Single Judge of this Hon'ble Court.

All the three writ petitions were allowed on the basis of judgment and order dated 21.06.2013 passed by learned Single Judge of this Hon'ble Court passed in CWJC No. 7956 of 2011 (Raj Shekhar Kumar & Ors Vs. State of Bihar & Ors).

No LPA was filed by the State in this case till passing of the order in aforesaid three cases.

State filed LPA against order dated 26.05.2016 passed in CWJC No. 3414 of 2016 (Satyadeo Tiwari Vs. State of Bihar) giving rise to LPA NO. 1831 of 2016 (State of Bihar & Ors Vs. M/s Satyadeo Tiwari) as well as CWJC No. 8020 of 2016 (M/s Nagdeo Traders and Ors Vs. State of Bihar & Ors) giving rise to LPA NO. 1819 of 2016 (State of Bihar & Ors Vs. M/s Nagdeo Traders and Ors), however, no LPA was preferred against the common order dated 26.05.2016 passed in CWJC No. 8172 of



2016 (Hazari Lal Khemchand Bairgania Vs. State of Bihar & Ors) till 2019.

LPA No. 831 of 2016 was dismissed by a Division Bench of this Court by order dated 27.07.2017 on the ground that against the common order dated 26.05.2016 passed by learned Single Judge in three writ petitions, State has preferred LPA against only one writ petition being CWJC No. 3414 of 2016 (Satyadeo Tiwari Vs. State of Bihar & Ors) and had deprecated the action of the State Government in selectively filing appeals and adopting a pick and choose method in filing appeal, however, from the records, it appears that State had also filed appeal against the common order dated 26.05.2016 passed in CWJC No. 8020 of 2016 (M/s Nagdeo Traders and Ors Vs. State of Bihar & Ors) giving rise to LPA NO. 1819 of 2016 (State of Bihar Vs. Nagdeo Traders & Ors) which was also dismissed by Division Bench vide order dated 14.12.2017 in terms of order dated 27.07.2017 passed in LPA NO. 1831 of 2016 (State of Bihar & Ors Vs. M/s Satyadeo Tiwari).

State of Bihar preferred SLP against both the orders taking a plea that State has preferred 3 LPA's against the common order dated 26.05.2016 passed in three writ petitions and the LPA Court has erroneously dismissed the LPA on the



ground that State has filed LPA against one order only and did not file LPA against remaining two writ petitions and two other LPA's being LPA No. 1819 of 2016 and LPA No. 1845 of 2016 are still pending and the Apex Court set aside both the orders passed in LPA and directed that all the three LPA's arising out of common order dated 26.05.2016 passed in three writ petitions be heard together.

From the records, it appears that wrong submission was made before the Apex Court that against the common order dated 26.05.2016 passed in three writ petitions, three LPA's were filed but as a matter of fact LPA against CWJC NO. 8172 of 2016 was filed in 2019 much after the order passed by the Apex Court being LPA No. 258 of 2019 (State of Bihar Vs. Hazarimal Khemchand) which has never been listed before the Division Bench and there is delay of 2 years 7 months and 11 days in filing this LPA.

As a matter of fact, LPA No. 1845 of 2016 (State of Bihar Vs, Raj Shekhar Kumar) was filed against order dated 21.06.2013 passed in CWJC No. 7956 of 2011 in which there was delay of 3 years and 57 days in filing LPA and same was dismissed by order dated 27.07.2017 in terms of order dated 27.07.2017 passed in LPA No. 1831 of 2016.



Against this order also State filed SLP and the Apex Court set aside the order dated 27.07.2017 and remanded the matter to be heard along with LPA No. 1831 of 2016.

Against the common order dated 26.05.2016 passed in CWJC No. 8172 of 2016, LPA No. 258 of 2019 (State of Bihar & Ors Vs. M/s Hazarimal Khemchand Bairgania) was filed which is still defective and there is delay of 2 years, 7 Months and 11 days in filing this appeal and there is no application filed for condonation of delay.

From the facts, as detailed above, it is apparent that a wrong submission was made before the Apex Court that against the common order dated 26.05.2016 passed in three writ petitions, 3 LPA's have been filed by the State of Bihar but as a matter of fact only two LPA's were filed and third LPA was filed in the year 2019, much after the remand order passed by the Apex Court.

Impugned judgment and order dated 21.06.2013 passed in CWJC NO. 7956 of 2011, against which LPA No. 1846 of 2016 has been filed, reads as follows:-

“The question would be whether on the death of the sole proprietor of the firm, his heirs and successors who apply for the same can be permitted to continue the firm with necessary alteration in the licence either as a proprietorship concern or as a partnership. It is evident that when a



partnership firm is reconstituted with a new person entering into the said firm, he has all rights and liabilities as the earlier partners under the partnership law; the said firm is practically a new firm although the business may continue to be carried on in the name of the old firm. If such induction of an absolute stranger into a partnership firm is permissible in terms of clause-9, this Court is unable to understand as to how the immediate heirs and successors of the erstwhile licensee can be excluded from enjoying the same benefit of continuing the firm by getting their names added into the licence either as proprietor or partner provided there is no dispute within the family with regard to those person or persons being allowed to continue the business of the firm.

In the aforesaid view of the matter, in my view the provision of clause 9 of the 1984 Order regarding addition, deletion and alteration in the entry made in the licence has full force in the facts and circumstances of the case and the licensing authority ought to have considered the application of the petitioners and not taken the stand that the same is not permissible. The writ application is, accordingly, allowed and the licensing authority is directed to consider the application of the petitioner in the light of the aforesaid observations made in this order and pass appropriate order in accordance with law within a period of one month from the date of receipt/production of a copy of this order.”

This Court does not find any infirmity or error in the order passed by learned Single Judge requiring any interference by this Court, moreover, several writ petitions of similar nature have been allowed by this Court and in compliance thereof dealership licence for Kerosene oil in terms of the order passed by writ Court has been issued, in such view of the matter also



the order passed by the learned Single Judge needs no interference.

Accordingly, these LPA's are dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2021
Transmission Date	NA

