IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10281 of 2012

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M/s Jayshree Sugar Mills, At and P.O. Majhaulia, District- West Champaran, (Bihar) (Formerly Known as M.P. Chini Industries Ltd.) through Its Chief Operating Officer R.N. Sharma Son Of Mahendra Nath Sharma.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner of Commercial Taxes, Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Bettiah Circle, Bettiah.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10280 of 2012

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M/s Vishnu Sugar Mills Limited, P.O. Harakhua, P.S. Vishnu Sugar Mills, District- Gopalganj, Through Its General Manager, Shri P.R.S. Panicker Son Of Late Raghav Panicker.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxs, Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxs, Gopalganj Circle, Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10282 of 2012

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M/s Hasanpur Sugar Mills (Proprietor Upper Ganges Sugar & Industries Ltd.), Hasanpur, P.O. and P.S. Hasanpur Sugar Mills, Distt.- Samastipur, Through Its Executive President Birender Singh Son Of Sri Sarup Singh.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes, Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Samastipur Circle, Samastipur.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10818 of 2012

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M/s Tirupati Sugars Limited at Bagaha, District- West Champaran, Bettiah Through Its Resident Manager Cum Authorised Signatory Arun Kumar Son Of Late Ranjeet Kumar Maldahiyar.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes, Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Bettiah Circle, Bettiah

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10848 of 2012

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Bihar Sugar Mills Association (BISMA) AS Branch of Indian Sugar Mills Association (ISMA), New Delhi, Having Its Office At 303, Saroj Complex, Road No. 5d, North S.K. Puri, District- Patna-8 Through Its Secretary, Sri Naresh Bhatt, S/O Late Deo Nath Bhatt.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes Government Of Bihar, Patna

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10882 of 2012

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M/s Bharat Sugar Mills (Proprietor Upper Ganges Sugar & Industries Ltd.), At P.O. and P.S.-Sidhwalia, District- Gopalganj Through Its Senior Executive Vice President B.K. Sureka R/O Bharat Sugar Mills, Sidhwalia, District- Gopalganj.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Gopalganj Circle,

Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10960 of 2012

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M/s Sasa Musa Sugar Works Ltd. At and P.O.- Sasa Musa, District-Gopalganj, Through Its Factory Manager, Jamaluddin, S/O Late Nehaluddin.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Gopalganj Circle, Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 11098 of 2012

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M/s Riga Sugar Company Limited. AT & P.O. Riga, District Sitamarhi, through its Chairman-cum-Managing Director, Sri Om Prakash Dhanuka, Son Of Late Purushottam Lal Dhanuka.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes, Government Of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Sitamarhi Circle, Sitamarhi.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 11126 of 2012

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M/s New Swadeshi Sugar Mills, Proprietor Oudh Sugar Limited At and P.O. Narkatiaganj, Distt - West Champaran, Through Its Executive Vice President Commercial Sushil Kumar Poddar Son Of Sri Madan Lal Poddar.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner Of Commercial Taxes, Government Of

Bihar, Patna.

3. The Assistant Commissioner, Commercial Taxes, Bettiah Circle, Bettiah

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 10281 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10280 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10282 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10818 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10848 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10882 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 10960 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 11098 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11
(In Civil Writ Jurisdiction Case No. 11126 of 2012)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr.Ashish Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar, S.C. 11

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2021

Heard learned counsel for the parties.

In C.W.J.C. No. 10281 of 2012 titled as M/s Jayshree Sugar Mill & Ors., petitioner has prayed for the following relief(s):-

> (i) To issue an appropriate Writ/Order/Direction declaring the provisions of newly inserted Clause (ee) in Section 2 of Bihar Electricity Duty Act, 1948 (hereinafter referred to as the "Act"), Clause 2 and Clause 3 of the Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948) introduced by Bihar Finance Act, 2012 with effect from 17.10.2002 (as contained in Annexure 10) as ultra vires the Constitution of India and also otherwise as void.
> (ii) To hold and declare that The Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948) is in teeth of judgment dated 16.09.2009 passed by this Hon'ble Court in CWJC No 4613 of 2003 (Bihar Sugar Mills Association Vs. The State of Bihar & ors.) and other analogous cases and therefore liable to be struck down.
> (iii) To issue an appropriate Writ/Order/Direction in the nature of Mandamus commanding and restraining the Respondents and/or their servants and/or their agents from giving effect to the provisions of the Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948).
> (iv) For issuance of an appropriate writ, order or directions to the Respondent for refund of the amount deposited by the Petitioner sugar mill under the Bihar Electricity Duty Act, 1948.
> (v) For issuance of an appropriate writ, order or directions directing the Respondent to maintain status quo with regard to the recovery of electricity duty till the disposal of the Writ Petition.
> (vi) To grant such other consequential relief to the Petitioner which this Hon’ble Court may find the Petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case.

We find that in the analogous matters, the prayer is similar.

The matter was heard for some time.

We notice that the grounds raised during the course of the submissions as also the subsequent factual matrix are missing in the original petition. Conscious of the facts that Hon'ble the Supreme Court had transmitted the record of these petitions to this Court for adjudication on merit, granting interim protection, we are of the considered view that petitioners adopt any one of the two courses, enabling the State to effectively respond - (a) Petitioners file application seeking amendment of the petition, including the prayer as also the grounds challenging the *vires* of the statute (b) File a fresh petition on the same and subsequent cause of action, incorporating all pleas, within the stipulated period of time, during which period, the interim protection shall continue to remain in operation.

Having given thoughtful consideration to the submissions made at the Bar, we are of the considered view that it would be prudent that the petitioners choose the later and file a fresh petition.

Ordered accordingly.

Petitioners shall file a fresh petition on the same and subsequent cause of action, incorporating all the pleas, more so, factual in nature, in view of the intervening developments which took place during the pendency of the present *lis*. This the petitioners shall positively do within a period of eight weeks from today. Till such time the petition is filed within the aforesaid period, the interim protection granted in favour of the petitioners shall continue to operate. As and when any such petition is filed, the Registry shall immediately process the same and positively list it before the appropriate Court within three days.

Joint Registrar (List) to ensure compliance.

The writ petitions stand disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	