IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.318 of 2020

In

Civil Writ Jurisdiction Case No.6132 of 2020

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Vinod Mahto, Son of Shri Mangal Mahto, Resident of Jokairi, Police Station- Raxaul, District- East Champaran

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, Muzaffarpur.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 6134 of 2020

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Gupteshwar Singh, Son of Late Jahpasi Singh, Resident of Village- Pahari, Police Station- Karghar, District- Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, Rohtas.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 6135 of 2020

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Satendra Kumar Marhawar, Son of Shri Deo Janam Singh, Resident of Village- Mashar, Police Station- Mashar, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

2. The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, Bhojpur.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 6138 of 2020

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1. Bihar Regional Fish Producers Self Help Group Mahua Tola, Bihar Sharif (Nalanda) through its Secretary Md. Mushfique Alam, aged about 29 Years, Son of Late Monawwar Alam, Ward No. 3, Mahua Tola, Near Masjid, Police Station- Sohsarai.
2. Md. Mushfique Alam, Son of Late Monawwar Alam, Ward No. 3, Mahua Tola, Near Masjid, Police Station- Sohsarai, Secretary, Bihar Regional Fish Producers Self Help Group Mahua Tola, Bihar Sharif (Nalanda).

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, Nalanda.

... ... Respondent/s

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with

Letters Patent Appeal No. 98 of 2021

In

Civil Writ Jurisdiction Case No.6131 of 2020

==

Rajan Bharadwaj, Son of Shri Shyam Kishore Thakur, Resident of Sneh Sadan Samtapath, New Bangali Tola, Police Station- Jakkanpur, District- Patna.

... ... Appellant/s

Versus

1. The State of through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department,

Government of Bihar, Patna.

3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, Muzaffarpur.

... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 318 of 2020)
For the Appellant/s : Mr. Arvind Kumar, Adv.
For the Respondent/s : Mr.
(In Civil Writ Jurisdiction Case No. 6134 of 2020)
For the Petitioner/s : Mr.
For the Respondent/s : Mr.
(In Civil Writ Jurisdiction Case No. 6135 of 2020)
For the Petitioner/s : Mr.
For the Respondent/s : Mr.
(In Civil Writ Jurisdiction Case No. 6138 of 2020)
For the Petitioner/s : Mr.
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 98 of 2021)
For the Appellant/s : Mr. Arvind Kumar, Adv.
For the Respondent/s : Mr. Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 17-05-2022

Heard the learned counsel for the parties.

2. The writ petition bearing C.W.J.C. No. 6134 of 2020 *(Gupteshwar Singh Vs. The State of Bihar & Ors.)* has been listed before this Court on reference by a learned Single Judge. Two Letters Patent Appeals and two other writ petitions, *viz.*, L.P.A. Nos. 318 of 2020 and 98 of 2021 and C.W.J.C. Nos. 6135 of 2020 and 6138 of 2020 also

have been listed along with aforesaid C.W.J.C. No. 6134 of 2020.

3. We propose to first answer the reference in C.W.J.C. No. 6134 of 2020 *(Gupteshwar Singh Vs. The State of Bihar & Ors.)*, which shall govern the result in the afore-noted Letters Patent Appeals and the writ petitions.

4. The petitioner (in C.W.J.C. No. 6134 of 2020) had sought quashing of the order dated 09.05.2020 passed by the Director, Fisheries, Bihar, Patna (respondent No. 3), intimating to him and five others that the agreement with the petitioner for running the Fish-seed farm, Rohtas shall not be extended.

5. Pursuant to the advertisement issued by the Government on 16.09.2007, inviting “Expressions of Interest” from willing parties to construct and run Fish-seed hatcheries on the Government Fish-seed farms, located in different districts, on Public Private Partnership (P.P.P.) basis, which seed farms, at the relevant time, were under the control of Directorate of Fisheries, Govt. of Bihar, the petitioner had applied and was selected for Sisaura, Ramgarh (Rohtas) Fisheries. The advertisement clearly

stipulated that in case of acceptance of offer and the settlee running the Fish-seed farm for ten years successfully, there could be an extension of another ten years, subject to the assessment of performance of such settlee.

6. A settlement agreement was entered into between the petitioner and the authorized representative of the Directorate on 17.05.2010 to construct and run a Fish-seed hatchery and produce other aquaculture products for a period of ten years, commencing from 01.01.2010 to 31.12.2019, on a rental of Rs. 77,800/- per year.

7. According to the agreement, the hatchery had to be constructed and maintained by the petitioner from his own resources, which was to have a minimum capacity of producing 8 - 10 million hatchlings per year. A responsibility was cast upon the petitioner to protect the Farm from any encroachment and carrying out all directions issued to him by the Government. It was also made incumbent upon the settlee to maintain proper drainage for the excess water discharge during hatchery operations.

8. In the agreement itself, there was an extension clause, namely, Clause No. 4., which read as

follows :

> "After ten years of successful operation an extension of another ten years may be considered on the basis of the performance.".

9. It was the case of the petitioner before the learned Single Judge that before such agreement was entered into between him and the Directorate, a policy decision had been taken by the Fisheries Department of the Government *vide* notification dated 28th of April, 2010 that all such hatcheries, under the P.P.P. scheme, shall be evaluated by a Committee comprising seven members and that after ten years of successfully running of the model hatchery, any request by such settlee for a further extension could be considered.

10. It was the case of the petitioner that for ten years, the hatchery was run by him successfully and no complaint was lodged ever from any quarter.

11. The total expenses for constructing the Fish-seed hatchery came to Rs. 20,00,000/-. The petitioner liberally made investments in the hope of getting an extension of the term which expired on 31.12.2019.

12. A request was made by the petitioner on

16.10.2019 for an extension of the agreement for a further period of ten years as he has been successfully producing 12 million hatchlings per year.

13. According to the petitioner, the Director, Fisheries had called for a report from the office of the District Fisheries-cum-Cheif Executive Officer with respect to the condition of the Fish-seed farm, whereupon the District Fisheries Officer had recommended for extension of the lease as the petitioner had been running the Seed Farm, as noted above, satisfactorily. The aforesaid report was dated 24.10.2019.

14. In the afore-noted background, the petitioner and many other settlees have challenged the order of the District Fisheries Officer refusing to grant extension of term to the settlees including the petitioner.

15. As opposed to the aforesaid contention of the petitioner before the learned Single Judge, the respondents urged that the extension of settlement was absolutely discriminatory, giving no vested right to the petitioner to claim for further extension. The Sisaura-Ramgarh Fish Farm, which was settled with the petitioner,

falls under the control of the Directorate of Fisheries. A joint inspection report, dated 28th of April, 2020, indicated that the Fish Farm was not maintained properly and that the petitioner had violated the terms and conditions of the lease agreement.

16. It was further urged on behalf of the respondents that according to Section 5 of the Bihar Fish Jalkar Management Act, 2006 *(in short the Act of 2006)*, the short-term settlement of *Jalkars* would be for five settlement years, whereas the long-term would be for ten settlement years and notwithstanding anything contrary in the Act of 2006, the Director, Fisheries, with the prior approval of the Government, could settle such *Jalkars* for a maximum period of ten settlement years with Fishermen Co-operative Society.

17. Section 6 of the aforesaid Act of 2006 further specified that a long-term settlement of *Jalkars* of water area up to four hectares shall be done only with trained fishermen or trained fishermen self-help group selected by the Managing Committee.

18. In view of the aforesaid statutory provision

of a long-term settlement, permissible for ten years only, any enabling clause in the agreement between the parties would be subservient to the Statute in that regard.

19. Thus, according to the respondents, no vested right had accrued in the hands of the petitioners and others for claiming extension of the agreement.

20. Lastly, it was urged on behalf of the respondents that in cases of several other settlees, two of the other Benches of this Court in C.W.J.C. Nos. 6131 of 2020 and 6132 of 2020 rejected the claim of the respective settlees for any further extension in view of the provisions regarding settlement contained in the Act of 2006.

21. The learned Single Judge, not finding the contention of the respondents to be justified for the reason of the advertisement inviting “Expressions of Interest” for constructing and running the Fish-seed hatcheries on Government Fish-seed farms clearly stipulating that after ten years of successful operation, a further extension of ten years could be considered on the basis of performance; the policy decision of the Government *vide* notification dated 28th of April, 2010, indicating that on successful handling of

the model hatchery, further extension of ten years could be considered as also the agreement with the petitioner which also stipulated that an extension for further ten years could be considered on the basis of performance of the settlee, observed that the selection of the petitioner and others as a Public Private Partner (P.P.P.) was not dependent on the provisions contained in provisions of 2006 Act, referred to above, providing for short and long terms settlement of *Jalkars* and that there was a promissory estoppel, denying the respondents the right to terminate the agreement on the expiry of the period of ten years of the initial agreement.

22. The learned Single Judge, on going through the various provisions of the Act of 2006 and the notification of the Government dated 28th of April, 2010 was *prima facie* of the view that the Bihar Fish *Jalkar* Management Act, 2006 did not control the settlement of Fish-seed farms, which fell under the control of Directorate of Fisheries and which were to be run on Public Private Partnership basis for which a separate list of Farms was required to be prepared.

23. A different Committee was entrusted with

the task for analyzing and evaluating the Fish-seed hatcheries to be established and the selection was to be made by the Committee after following the procedure mentioned in the notification of 2010.

24. Finding that the terms of the advertisement; the notification of the Government dated 28th of April, 2010 and the agreement between the parties had clearly made out a case of "promissory estoppel" in favour of the petitioner and for the business efficacy for allowing further extension in view of heavy investments made by the settlee as also a real and not illusory distinction between the expressions 'extension' and 'renewal' *(the distinction between 'extension' and 'renewal' is chiefly that in case of 'renewal', a new lease is required while in case of 'extension', the same lease continues in force during additional period by the performance of the stipulated act)*, the learned Single Judge thought it prudent to refer the matter to the Division Bench by formulating the following questions of law to be answered :

> (i) Whether the Act of 2006 would be applicable in respect of the settlement of Fish Seed Farms under the Control of the Directorate of Fisheries,

Government of Bihar. If yes,

(ii) Whether the notification dated 28th April, 2010 which is in the form of policy decision of the Government with respect to the norms and procedures to be followed in the matter of selection of the public private partner under the PPP Mode for establishing the running a Fish seed hatchery on a Fish seed farm under the control of the Directorate of Fisheries, Government of Bihar is in teeth of the Act of 2006 (As amended up-to-date).

(iii) Whether any statutory bar may be read or inferred under the provisions of the Act of 2006 on the power of the Government in the matter of giving extension to an another terms of ten years to the Public Private Partner who has been selected in accordance with the Government's policy to construct and run the Fish Seed Farm under PPP Mode on successful running of the Fish seed hatchery.

(iv) Whether the advertisement (Annexrue '1') and the deed dated 17.05.2010 (Annexure '3') containing a provision for extension of settlement in question for another period of ten years in case of successful running of the Fish-Seed Hatchery for initial ten years period by the selected offerer/beneficiary would attract the principle of 'Promissory estoppel' and the respondents would be obliged to abide by the terms and conditions of the deed dated 17.05.2010 (Annexure '3').

25. To answer the questions formulated by the learned Single Judge, referred to above, it would be

necessary to refer to the purpose behind enactment of Act of 2006.

26. The sole purpose appears to be to provide guidelines for settlement of *Jalkars* of the Department of Animal Husbandry and Fisheries.

27. A *'Jalkar'* means Tank, Pokhar, Ahar, River, Water Course Channel, Chaur, Dhav, Reservoir Lake, Ox-bow Lake etc. under the Department of Animal Husbandry and Fisheries, Bihar, in which Makhana, Singhara and fish is reared. Two Committees have been specified in the Act, namely, the "Managing Committee" and the "Reserve Deposit Fixation Committee", the former Committee comprising nine members with Collector as the Chairman and the latter having four members with Deputy Director, Fisheries (Range) as the Chairman.

28. All the *Jalkars* under the Fisheries Directorate shall thus be subject to the Act of 2006.

29. Guidelines have been provided for short and long terms settlement of the *Jalkars*; the short-term settlement for five years, whereas the long-term settlement for ten years. The decisions regarding the short-term

settlement by the District Fisheries Officer and the Deputy Director is appealable before the Director, Fisheries, whereas any appeal against any decision taken by the Collector or Director of Fisheries lies before the Court of Departmental Commissioner. An appeal against all decisions regarding short-term settlement by the Government could be filed before the Member, Board of Revenue. Thus, even if a *Jalkar* is settled on P.P.P. basis for Fish-seed hatchery, it shall, in general, be subject to the Act of 2006.

30. In the present instance, the *Jalkar* has been settled for establishment of Fish-seed hatchery on P.P.P. basis for which analysis and evaluation of the statistics is to be done by a Special Committee, comprising seven members with Director, Fisheries as the President. This appears to be a special case/species/genus of settlement of a *Jalkar* for the purposes of establishing Fish-seed hatchery and not merely rearing fish for which a separate Committee has been constituted.

31. However, with respect to the other guidelines, there could be no derogation from the provisions

contained in the Act of 2006.

32. Even in the Government's notification dated 28th of April, 2010, which has paved way for settlement of *Jalkars* for the purposes of establishment of Fish-seed hatchery on P.P.P. basis, a specific provision has been made that in the first instance, the long-term settlement will be for a period of ten years. In no way, the Government's notification, referred to above, appears to be in teeth of the Act of 2006 so far as the provisions are concerned.

33. Since, there is a special settlement for the purposes of establishing Fish-seed hatchery on P.P.P. basis, a separate Committee has been constituted for evaluating the statistics and entering into settlement with private parties, but the basic procedure as delineated under the Act of 2006 has not been given go-bye.

34. Assuming that the Government notification dated 28th of April, 2010 is for a different species, it has followed the principle of an initial period of ten years only in terms of long term settlement with the caveat that further extension could be considered on the basis of performance of the settlee. Sections 5 and 6 of the Act of 2006, though

provides for short and long term settlement of *Jalkars* for a period of five years and ten years respectively but it does not foreclose any further extension altogether, which in all its aspect would be a fresh lease with the same party but subject to the consideration of successful management of the *Jalkar*/hatchery under the earlier agreement.

35. Thus all the questions framed by the Learned Single Judge could be answered as follows :

36. The Act of 2006 is all comprehensive so far as settlement of Government *Jalkars* are concerned and any specific instance of a separate type of settlement would by and large follow the principles and directions under the Act. If any other type of settlement with respect to the *Jalkar* is to be made, separate provision by the Government could be made, considering the need of the circumstance.

37. In the absence of any specific bar in the Act of 2006 for a further extension, it cannot be said that the Government notification dated 28.04.2010 as also the advertisement inviting “expression of interests” for establishment of Fish-seed farm on private public partnership basis and the agreement with respective parties

fall foul of Act of 2006.

38. In view of the specific promise in the advertisement dated 16.09.2007, published in Times of India that after ten years of successful operation, an extension of another ten years may be considered on the basis of performance as also the agreement with the petitioner, doling out such promise of consideration of an extension for a further period of ten years which would be subject to the assessment of performance of the hatchery by the settlee, the petitioner has made out a case of a legitimate expectation, if not promissory estoppel, for consideration for extension on the basis of his performance.

39. In this context, it would be relevant to note that when the Director Fisheries, Government of Bihar called for a report from the District Fisheries Officer, Rohtas, he found that the functioning of the *Jalkar*/Fish-seeds farm was satisfactory and recommended for extension of the term of the agreement.

40. However, later, *vide* order dated 09.05.2022, on a report of a committee comprising four members that the hatchery was not maintained properly, the

request for extension of the term was declined. The report dated 22.04.2020 does not indicate that the petitioner or other settlees were asked for their response or were permitted to explain their cause.

41. Thus, in view of the divergent report of the District Fisheries Officer and of the Committee, it is clearly reflected that a unilateral decision was taken by the committee in holding that the seed farm was not maintained properly.

42. It is the case of the petitioner that when work was begun in the Hatchery, some encroachment was found on the farm land by a Government School and Panchayat Bhawan, which was promptly reported to the concerned District Fisheries Officer. Thereafter, ever since the period of settlement came in currency, there had been no encroachment of any kind from whichever quarter.

43. It was further explained by the petitioner before the learned Single Judge that every year, during the rainy season, because of excessive rain, the sand/soil of the embankment gets eroded. The embankments are also partially damaged because of rats as also became the

movement of the “common carp fishes” but appropriate repair work was carried out every year between March to June.

44. The petitioner, therefore, seriously contended the correctness of the report of the committee which, in turn, was based on which report is not known.

45. The petitioner but does not appear to have been asked to explain his cause.

46. The upshot of the above discussion and analysis is that in the absence of any restrictive covenant in not granting any extension of long term settlement of *Jalkars* under the 2006 Act and the terms of the advertisement, the Government policy decision of 28th of April, 2010 and the agreement with the party, providing for a provision for consideration of extension on the basis of performance, an appraisal of the performance of the settlee including the petitioner is a must before any decision is taken to decline the request for extension of such agreement.

47. Since the matter has come on reference for the reason of the learned Single Judge not agreeing with the

earlier decisions by two other Benches of similar strength, after answering the question, the matter would otherwise have been required to be sent to the learned Single Judge for rendering his decision. Nonetheless, since the two other orders passed by the learned Single Judges have been challenged in appeals *vide* L.P.A. Nos. 318 of 2020 and 98 of 2021 and two other cases listed before the learned Single Judges have also been tagged with the present reference, we, on an anxious consideration of all the pros and cons of the case and on the consent of the parties are of the view that instead of sending the matter to the learned Single Judge after answering the questions, disposing of all the connected matters would be appropriate.

48. But before doing that, we deem it important to deal with the issue of "promissory estoppel" on which principle the learned Single Judge has differed with the decisions of the two other Benches of similar strength of this Court which is juxtaposed to the opinion of this Bench of there being a legitimate expectation of a settlee/petitioner of consideration of his claim for extension on the basis of his past performance and its assessment by the Government.

49. The Supreme Court in case of ***The State of Jharkhand and Others vs. Brahmputra Metallics Ltd., Ranchi and Another, (2020) SCC Online SC 968****, has* traced the development of the concept of "promissory estoppel" and "legitimate expectation".

50. The Bench of the Apex Court has noted the observations of *Lord Denning* in ***Crabb vs. Arun DC [1976] 1 Ch 179 (Court of Appeal)*** regarding the genesis of promissory estoppel in equity. The basis of promissory estoppel is the interposition of equity, which mitigates the rigors of strict law. For the equitable doctrine of promissory estoppel to operate, there must be legal relationship, giving rise to rights and duties between the parties and a promise or a representation by one party that he will not enforce against the other his strict legal rights arising out of that relationship along with an intention on the part of the former party that the latter will rely on the representation and the latter party does rely on such representation.

51. Even under these circumstances, the operation of the doctrine could be excluded, even if it is not inequitable for the first party to go back on his promise.

52. The doctrine also applies where the relationship giving rise to rights and correlative duties is non-contractual.

53. However, the judicial decisions have cautioned that such doctrine of "promissory estoppel" cannot be used as a "*sword*" to give rise to a cause of action for the enforcement of a promise lacking any consideration. It could be used only as a *"shield"* where the promissor is estopped from claiming enforcement of its strict legal rights, when a representation by words or conduct has been made to suspend such rights.

54. In ***Brahmputra Metallics Ltd.*** *(supra)*, the Supreme Court has further noted the expansive interpretation of the doctrine of promissory estoppel explained in ***Motilal Padampat Sagar Mills Co. Ltd. vs. State of U.P. (1979) 2 SCC 409***, which viewed promissory estoppel as a principle in equity unhampered by the doctrine of consideration.

55. Under the English Law also, the doctrine of "promissory estoppel" had developed simultaneously with the doctrine of "legitimate expectations", which is

founded on the principles of 'fairness' in Government dealings. If a party is made to believe that he shall receive a substantive benefit, then such expectation cannot be frustrated in an unfair manner. It would only be fair for the stronger party not to exclude it altogether.

(emphasis provided)

56. What was clarified in ***Brahmputra Metallics Ltd**. (supra)* is that the legitimate expectation can constitute a cause of action.

57. Under the doctrine of "promissory estoppel", a promise is made between the two parties but the doctrine of legitimate expectation has a wider connotation as it is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities.

58. Any decision taken in an arbitrary manner would offend the principle of legitimate expectation.

59. The expectations of the settlees/petitioner in the present case is based on the advertisement inviting "expressions of interest"; the notification of the Government dated 28th of April, 2010 and the agreement

itself with such a renewal clause; coupled with heavy initial investments by the settlees that before any decision with respect to extension of the term of agreement or declining such request by the Government, necessary appraisal would be made of the functioning of the project for the last ten years and in case it is found to be satisfactory, a further extension could be considered.

60. Granting further extension though is discretionary but the decision must be an informed one. For the decision to be informed, it would be incumbent upon the respondents/Government to provide reasonable opportunity to the settlees/representationists/petitioner to present his/their cause and only on a fair assessment, a decision is required to be taken.

61. In the present case, we find that there is a divergence in the report of the District Fisheries Officer, Rohtas and the appraisal of the committee, which does not reflect any participation of the petitioner before coming to such conclusion.

62. Situated thus, we direct that a fair opportunity be given to the petitioner/settlees by giving

them ample time to be present at the time of assessment of the farm/running of the farm in the last ten years and then a decision be taken whether or not to extend the lease period for settlement.

63. We, therefore, direct the authorities to intimate the settlees of the date when the assessment would be made and on a proper appraisal only, a decision shall be taken.

64. The entire exercise be concluded within a period of sixty days from the date of receipt/production of a copy of this judgment.

65. We reiterate that we are not directing for extension of the lease of the petitioners but are only directing for a re-assessment/fair assessment of the functioning of the farms and in case it is not found to be expedient to give them any extension, necessary decision with reasons shall be taken and such decision shall be communicated to the petitioner and other settlees.

66. The two Letters Patent Appeals, bearing L.P.A. Nos. 318 of 2020 and 98 of 2021 and the writ petitions, bearing C.W.J.C. Nos. 6134 of 2020, 6135 of

2020 and 6138 of 2020, also stand disposed off in terms of this order/judgment.

67. Interlocutory application, if any, also stands disposed off.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

Krishna/Praveen

AFR/AFR	AFR
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