

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5125 of 2024

1. Maa Kamakhya Traders, having its Registered Office at 2nd Floor, KTC Building NH-37, Beharbari, Beltola, Guwahati, Assam, through its Proprietor Sushil Kumar Dwivedi @ Sushil Kumar, aged about 46 years, Male, Son of Sri Jai Govind Dwivedi, Resident of 2nd Floor, KTC Building NH- 37, Beharbari, Beltola, Guwahati, Assam.
2. Kamadgiri Trading Company having its Principal Place of Business at First Floor, 3420-3421, Near Metro Hauz, Qazi Gali, Chaumukha Mandir, New Delhi through its Proprietor Shivam Dwivedi, aged about 29 years, Male, Son of Sunil Dwivedi, resident of M-2/ 1 C, First Floor, Model Town- 3, P.S.- Model Town, District North West Delhi.
3. Satyam Trans Logistic having its Registered Office at Kejriwal Complex, Athgaon, Guwahati, Assam through its Manager cum Authorized Representative Gopal Yadav, aged about 35 years, Male, Son of Rajeshwar Yadav, Resident of Ward No.- 09, Gram Simraha, P.S.- Kusheshwar Asthan, District- Darbhanga.
4. Shyam Sunder, Son of Khairathi Lal, Resident of Mehlan Road, Sangrur, Tehsil, P.S.- Sangrur, District- Sangrur, Punjab.

... .. Petitioners

Versus

1. The Union of India through the Chief Commissioner, Customs, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
2. The Commissioner of Customs (Preventive) cum Adjudicating Authority, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
3. The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, Lucknow, Uttar Pradesh.
4. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, First Floor, Customs Office, Building, Imali Chatti, Muzaffarpur, Bihar.
5. The Intelligence Officer cum Seizing Officer, Directorate of Revenue Intelligence, Regional Unit, First Floor, Customs Office, Building, Imali Chatti, Muzaffarpur, Bihar.
6. Sudhanshu Kumar, Father's name not known to the petitioner I. O cum Seizing Officer, Directorate of Revenue Intelligence, Regional Unit, First Floor, Customs Office, Building, Imali Chatti, Muzaffarpur, Bihar.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Prabhat Ranjan, Advocate
For the CGST and CX	:	Mr. Dr. K.N. Singh, Additional Solicitor General
		Mr. Anshuman Singh, Senior Standing Counsel
		Mr. Amarjeet, JC to ASG
		Mr. Abhijeet Gautam, Advocate
		Mr. Mayank Kumar, Advocate



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 17-03-2025 In course of hearing of the writ application, Dr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX has, at the outset raised an issue. It is submitted that one Mr. Gopal Yadav is the deponent in this case. In paragraph '1' of the affidavit, he has stated that he is Manager-cum-Authorized Representative of the petitioner no. 3 firm in this writ application and is well conversant with the facts and circumstances of this case.

2. It is submitted that this writ application has been filed on behalf of four petitioners. Three of the petitioners are the business entities/firm who are represented through their respective proprietor(s). The petitioner no. 4 is an individual. The deponent of the affidavit has not declared that he has been authorized by Petitioner Nos. 1, 2 and 4 as well to swear this affidavit.

3. Learned ASG further submits that the deponent of the affidavit has not even declared that he has gone through the statements made in the writ application and has understood the same.

4. Relying upon a Full Bench Judgment of this Court in



the case of **Dipendra Nath Sarkar vs. State of Bihar** reported in **AIR 1962 Pat 101**, learned ASG would submit that in the said case, the Hon'ble Full Bench has taken a serious note of the discrepancies occurring in an affidavit filed before the Court. In the said case, one Sri. N.P. Sinha had sworn an affidavit but the Court found that he had no *locus standi* to file an affidavit. Further, this Hon'ble Court found that the affidavit of Sri. N.P. Sinha was also defective because it was not clearly expressing out as to how much is the statement of the knowledge of the deponent and how much is the statement of his belief and there was violation of Order 19 Rule 3 of the Code of Civil Procedure. In such circumstance, the Hon'ble Full Bench rejected the affidavit.

5. Learned ASG submits that an affidavit filed before this Court in support of a writ application must be in accordance with law. In the present case, not only that the deponent is not saying that he is authorized representative of Petitioner Nos. 1, 2 and 4, he has also not brought on record his authorization to file this writ application on behalf of the petitioners.

6. Mr. Prabhat Ranjan, learned counsel for the petitioners has submitted that a similar plea was taken by the learned ASG in case of **Sukhdeo Singh and Another Vs. Union of India and Others** and the analogous matters decided by a learned co-ordinate Bench of this Court on 05.12.2024 in **CWJC**



No. 7999 of 2020, however, the learned co-ordinate Bench accepted the submission on behalf of the petitioners that it is a bonafide mistake. A copy of the judgment has been placed before this Court and attention of this Court has been brought towards paragraphs '11' and '17' of the judgment.

7. We have noticed that the learned co-ordinate Bench has accepted the submission of the petitioners taking it that such error crept-in inadvertently and the contention of the respondents in the said case that the second petitioner had no *locus standi* is too technical.

8. We have considered the issue raised by learned ASG. It is a matter of record that this writ application has been preferred by four petitioners, three of whom are separate business entities and the fourth petitioner is an individual. They are seeking the following reliefs:-

“(i) Quashing of the Seizure Memo dated 23.11.2023, corresponding to DRI Case No. 08/2023-24 dated 23.11.2023 vide DIN 202311DDZ80000666FF3 by which, 23520 Kgs. of Assam Dried Areca Nuts along with Tata LPT Truck bearing Registration No. PB-13AW/9261 have been seized under Section 110 of the Customs Act, 1962 for alleged violation of Section 32, 33, 34, 46 and 47 of the Customs Act, 1962;

(ii) Provisional release of the 23520 Kgs. of Betel Nuts and the Truck bearing Registration No. PB-13AW/9261 seized by the Respondent (s) vide Seizure Memo dated 23.11.2023 in connection with DRI Case No. 08/2023-24 dated 23.11.2023 on the ground that the seized



goods are perishable in nature and open to quick and natural decay due to acute weather condition;

(iii) Quashing of the seizure of Summons dated 14.12.2023 under Section 108 of the Customs Act in connection with DRI MRU Case No. 08/2023 dated 23.11.2023 vide DIN 202312DDZ80000018312 requiring the attendance of the Petitioner No. 3 in aid of enquiry after the Seizure has been affected.

(iv) Restraining the Respondents from taking any coercive action against the petitioners in connection with Seizure dated 23.11.2023 corresponding to DRI Unit Case No. 08/2023-24 during the pendency of the present writ application and/or without the leave of this Hon'ble Court."

9. It is evident that while petitioner no. 1 and 2 have interest in the goods seized, the petitioner nos. 3 and 4 are concerned with the seized vehicle.

10. In the writ application, there is no averment that Gopal Yadav who is the deponent has been duly authorised by the petitioners to present this writ application in this Court. No document showing authorisation in favour of the deponent has been enclosed. The deponent has claimed in the affidavit that he is Manager-cum-authorised representative of petitioner no.3. He has not stated that he has been authorised by all the petitioners to swear affidavit.

11. This Court further finds that in the affidavit, the deponent has not declared that he has gone through the statements made in the writ application or that those statements have been



read over and explained to him. The affidavit, therefore, suffers from several infirmities. It is not in accordance with law and the rules of the Patna High Court.

12. We have gone through the judgment of the Hon'ble Full Bench in the case of **Dipendra Nath Sarkar** (*supra*). In paragraph '5' of the judgment, the Hon'ble Full Bench has discussed the discrepancies noticed in the affidavit filed in the said case. Paragraph '5' of the said judgment reads as under:-

“(5).There is an affidavit of Sri N.P. Sinha, a clerk of the school, but this affidavit cannot be taken into account because Sri N.P. Sinha has no locus standi to file an affidavit. The affidavit of Sri N.P. Sinha is also defective because it does not clearly express as to how much is a statement of the knowledge of the deponent and how much is a statement of his belief, and there is hence violation of O. 19, R. 3, Code of Civil Procedure.”

13. It appears that the Full Bench judgment was not placed before the learned co-ordinate Bench of this Court. The observations of the learned co-ordinate Bench in paragraph '17' on which learned counsel for the petitioners has relied upon would not help him on the face of the views of the Hon'ble Full Bench in case of **Dipendra Nath Sarkar** (*supra*).

14. In case of **State of Bihar vs. Kalika Kuer @ Kalika Singh & Ors.** reported in (2003) 5 SCC 448, the Hon'ble Supreme Court has held in paragraph '5' and '6' as under:-

“5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In *Halsbury's Laws of England* (4th Edn.) Vol. 26: *Judgment and Orders: Judicial Decisions as*



Authorities (pp. 297-98, para 578) we find it observed about per incuriam as follows:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow²; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force³. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties⁴, or because the court had not the benefit of the best argument⁵, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority⁶. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake.”⁷

Lord Godard, C.J. in *Huddersfield Police Authorities case*² observed that where a case or statute had not been brought to the court’s attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

6. In a decision of this Court reported in *Govt. of A.P. v. B. Satyanarayana Rao*⁸ it has been held as follows: (SCC pp. 264-65, para 8)

“The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. ...We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law.”

2. [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. In *Huddersfield Police Authority v. Watson*, 1947 KB 842 : (1947) 2 All ER 193.]

3. [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. see also *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.*, (1941) 1 KB 675 : (1941) 2 All ER 11. For a Divisional Court decision disregarded by that court as being per incuriam, see *Nicholas v. Penny*, (1950) 2 KB 466 : (1950) 2 All ER 89.]

4. [*Morelle Ltd. v. Wakeling*, (1955) 2 QB 379 : (1955) 1 All ER 708 (CA)]

5. [*Bryers v. Canadian Pacific Steamships Ltd.*, (1957) 1 QB 134 : (1956) 3 All ER 560 (CA) Per Singleton, L.J., affirmed in *Canadian Pacific Steamships Ltd. v. Bryers* 1958 AC 485 : (1957) 3 All ER 572.]

6. [*A. and J. Mucklow Ltd. v. IRC*, 1954 Ch 615 : (1954) 2 All ER 508 (CA), *Morelle Ltd. v. Wakeling*, (1955) 2 QB 379 : (1955) 1 All ER 708 (CA), see also *Bonsor v. Musicians' Union*, 1954 Ch 479 : (1954) 1 All ER 822 (CA), where the per incuriam contention was rejected and, on appeal to the House of Lords although the House overruled the case which bound the Court of Appeal, the House agreed that that court had been bound by it; see *Bonsor v. Musicians' Union*, 1956 AC 104 : (1955) 3 All ER 518 (HL).]

7. [*Williams v. Glasbrook Bros. Ltd.*, (1947) 2 All ER 884 (CA)]



15. Since the binding precedent of Hon'ble Full Bench was not brought to the notice of learned co-ordinate Bench of this Court in case of **Sukhdeo Singh** (supra), the opinion that ".... the contention of the respondents that the second petitioner has no locus is too technical....." would be *per incuriam*.

16. At this stage, we are of the view that there being no averment either in the writ application or in the affidavit that the deponent Gopal Yadav has been appointed/authorised as legal representative of the writ petitioners to file the present writ application and to swear affidavit on their behalf, the writ application as framed would be rendered incompetent.

17. At this stage, Mr. Prabhat Ranjan, learned counsel for the petitioners submits that he may be allowed to withdraw this writ application with liberty to file a duly constituted writ with proper authorization and affidavit.

18. Dr. K.N. Singh, learned ASG has no objection to the same.

19. Having regard to the discussions made hereinabove, we permit learned counsel for the petitioners to withdraw this writ application with liberty to file a fresh



plea/writ as may be advised.

20. All contentions are left open.

21. This writ application stands dismissed as
withdrawn with liberty as above.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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