

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.417 of 2025

In
Miscellaneous Jurisdiction Case No.1344 of 2023

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Mr. Kaushal Kumar, The District Magistrate Supaul.

... .. Appellant/s

Versus

1. Pintu Kumar Son of Devnarayan Yadav, R/v- Mayurva, P.S. Triveniganj, District - Supaul.
2. The State of Bihar Bihar.
3. Mr. Anand Kishore, The Principal Secretary, Urban Development Department, Bihar, Patna.
4. Mr. Manoj Kumar, The Divisional Commissioner, Saharsa.
5. Mr. Sambhu Nath, The Sub-Divisional Officer, Triveniganj, District- Supaul.
6. Mr. Rajesh Chaudhary, The Officer- in-Charge, Police Station, Jadiya, District - Supaul.
7. Mr. Mukesh Kumar, The Deputy Development Commissioner- cum-the Chief Executive Officer, Zila Parishad Supaul, Supaul.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay, GA-5 Mr.Pratik Kumar Sinha (Ac To Ga 5)
For the Respondent/s	:	Mr.Government Advocate (2)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 17-04-2025

The defect(s) pointed out by the Stamp Reporter is ignored for the present.

2. Mr. Ajay, the learned Senior Advocate for the State has pointed out that the learned Single Judge by his order dated 04.04.2025 insists for the personal appearance of



the District Magistrate, Supaul, notwithstanding the fact that an application had been filed on his behalf for exemption from personal appearance as also a statement was made that the order passed by the Writ Court was directed against the Chief Executive Officer, *Zila Parishad* Supaul and not against the District Magistrate/the appellant, who was just a party in the writ petition.

3. It appears that the writ petitioner (CWJC No. 7898 of 2022) had approached the Court for a direction to the Chief Executive Officer, *Zila Parishad* to facilitate collection of money through toll tax from the bus stand, which was settled in his favour but that was not allowed to do so because of the criminal activities of outsiders.

4. Looking at the prayer made by the writ petitioner, the learned Single Judge directed the Chief Executive Officer, *Zila Parishad*, Supaul to examine the facts of the case and if it was found that the contentions of the writ petitioner were correct, then appropriate orders would be passed by him. Further, it was directed that in case the accusation of the writ petitioner was found to be correct, then the CEO, *Zila Parishad*, Supaul would calculate the



losses which would have accrued to the writ petitioner and would then arrange for appropriate compensation to the writ petitioner. Till such an issue was decided, the respondents in the writ petition were directed for not taking any coercive steps against the writ petitioner for recovery of any amount which would otherwise be due to the *Zila Parishad*. The writ petitioner had been asked to file a representation before the CEO, *Zila Parishad*, Supaul within four weeks of the passing of the aforesaid order dated 01.12.2022.

5. This Court has been informed that the representation of the writ petitioner was rejected with reasons. Suppressing such fact, a contempt petition was filed by the writ petitioner in which the learned Single Judge heard the parties on 20.03.2024 and directed for listing of the case after one week. The matter was then listed before the learned Single Judge on 26.04.2024 when he directed for initiating a contempt proceeding against the appellant(Respondent No. 4 in the writ petition)/ District Magistrate, Supaul and the DDC- cum- Chief Executive Officer/Respondent No. 5. Both of them were asked to file their separate show cause reply within a stipulated time,



responding to the observation as to why they be not punished for deliberate defiance of the order of the court willingly and knowingly.

6. It further appears that an enquiry was directed to be conducted in this regard by the District Judge, Patna. Though we have not been able to find any such order constituting an enquiry, but from the order dated 09.08.2024, it appears that the learned Single Judge was awaiting the report of the enquiry before taking any action in the matter.

7. Be that as it may, even though the appellant/Respondent No. 4 in the writ petition was not under any direction of the Writ Court to do anything in the matter, he filed his show cause reply through his lawyer along with an application for exemption of personal appearance.

8. The learned Single Judge by his order dated 04.04.2025, which has been impugned in the present appeal, rejected the same observing that such a request would be considered only after the proposed contemnors i.e. Respondent No. 4 (appellant herein) and Respondent No. 5 appeared in person. While rejecting such a request for



exemption of personal appearance, the learned Single Judge also expressed his displeasure by stating that the facts and circumstances make it very obvious that the proposed contemnors are hell-bent to destroy the business of the writ petitioner.

9. Mr. Ajay, at the outset, submitted that there is no reservation of the appellant in appearing before the Court on summons in a contempt proceeding, but there is a serious apprehension in his mind that since the Court has displayed his predilections by spelling out his displeasure against him as well, even when he was not under any mandate for which any contempt petition ought to have been entertained, he may be proceeded against.

10. That apart, the appellant has drawn the attention of this Court to the Standard Operating Procedure (SOP) on personal appearance of Government officials in a proceeding, formulated pursuant to the judgment dated 03.01.2024 passed in Civil Appeal Nos. 23-24 of 2024 (*The State of Uttar Pradesh & Ors. vs. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors.*) of the Supreme Court. In Clause 5 of the said SOP, the



procedure for personal presence for enforcement/contempt of court proceedings has been elaborately dealt with. It would be more appropriate to extract the entire Clause 5 for the sake of completeness as also for ready reference:-

“5. Personal presence for enforcement/contempt of court proceedings.

5.1. The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2. Preliminary Determination of Contempt: In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3. Notice and Subsequent Actions: Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4. Procedure when personal presence is directed: In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.



5.5. Addressing Non-Compliance: The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6. When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.”

11. Referring to the afore-noted sub-sections of Clause 5 of the said SOP, Mr. Ajay has submitted that calling for the appellant to remain physically present in the court in such circumstances is farcical and will only result in waste of time. Even at the cost of repetition, he has submitted that the appellant was never directed by the Writ Court for any work; rather the direction was to the CEO of the *Zila Parishad*, which direction has already been complied with.

12. Under such circumstances, by only referring to the Patna High Court Rules, which provides for the physical presence of the proposed contemnor on the first occasion, there should not have been any insistence for the personal appearance of the appellant/Respondent No. 4.



13. A brief detour into the facts of the case has convinced us that the appellant/Respondent No. 4 in the contempt petition ought not to have been summoned, even though he was arraigned as one of the respondents in the writ petition. No relief was sought from him nor was he given any direction which remained unobeyed. Even otherwise, the representation of the writ petitioner was rejected by the CEO, which order, if was not to the satisfaction of the writ petitioner, called for a fresh challenge in a writ petition, but definitely not in a contempt petition.

14. The prayer made by the writ petitioner also was bizarre in as much as without naming the persons who were preventing him as a settlee to realize toll from the bus stand, a direction was sought to prevent such wrong activities and permit the writ petitioner to operate under the settlement. No criminal case was filed by the writ petitioner, which fact appears from the orders passed by the Writ Court. There is no reference in any one of the orders of the Writ Court about the writ petitioner having exercised his rights of being protected from illegal activities.

15. A writ petition has not to be treated as a *John*



Doe petition.

16. Since we are not called upon to decide the correctness of the orders passed by the Writ Court, we refrain ourselves from making any comment, except testing the correctness of the order passed in the contempt proceeding, insisting for the personal appearance of Respondent No. 4 and the Court not advert to the explanation offered and request made for exemption for personal appearance.

17. This militates against the standard operating procedure, which may not be statutory, but has been framed in accordance with the judgment of the Supreme Court and, therefore, has a binding effect.

18. It is well settled proposition of law that if any issue is decided by a Court or the Court issues any direction relating to the merits of the disputes between the parties, in a contempt proceeding, any aggrieved person would not be rendered remediless. Such an order is open to challenge in an intra-Court appeal, if the order is of a learned Single Judge or by seeking special leave to appeal under Article 136 of the Constitution of India.



19. The order impugned cannot be called an interlocutory order but an intermediate order, which decided the issue of the moment: the refusal of the request of the appellant for exemption and rejection of the explanation that no contempt was maintainable against him [refer to *Midnapore Peoples' Coop. Bank Ltd. and Ors. vs. Chunilal Nanda and Ors. : (2006) 5 SCC 399*; *Shah Babulal Khimji vs. Jayaben D. Kania and Anr : 1982 SCR (1) 187*; and *Mithailal Dalsangar Singh and Ors. vs. Annabai Devram Kini and Ors. : AIR 2003 SC 4244*].

20. Finding the order dated 26.04.2024 passed by the learned Single Judge insisting for the personal appearance of the appellant to be wholly unnecessary, we modify the order to the extent that it would not be necessary for the appellant/Respondent No. 4 to present himself personally before the Court on the next date fixed.

21. We request the learned Single Judge to look into the explanation offered and also decide the application for dispensing with his personal appearance. In case it is found that no contempt is made out against the appellant, it would only be in the fitness of things that the proceedings



against him be dropped.

22.However, such observations are only limited to the case of the appellant/Respondent No. 4 and not Respondent No. 5, who has expressed no apprehension in appearing before the Court on the date fixed and he stands under an obligation to decide the issues raised by the writ petitioner in a proper manner, as has been directed by the learned Single Judge.

23. With the afore-noted modification in the order dated 26.04.2024, this appeal stands disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sujit/Saurav

AFR/NAFR	NAFR
CAV DATE	NA
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