IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1785 of 2016

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Ajit Kumar S/o Late Bhagwan Dayal Singh R/o Vill. P.O.- Achhua, P.s.- Dulhin Bazar, District- Patna Bihar

... ... Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Bihar, Patna.
2. Principal Secretary, Energy Department, Bihar, Patna
3. Chairman-cum-MD, Bihar State Power Holding Company Ltd., Patna
4. District Magistrate, Patna
5. Executive Electrical Engineer, Bihta, Patna
6. Assistant Electrical Engineer, Electric Supply Sub-Division, Paliganj, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.K. Sinha, Sr. Advocate
	:	Mr. Yogendra Kumar Sinha, Advocate
	:	Mr. Ratneshwar Prasad, Advocate
	:	Mr. Atul Dayal, Advocate
	:	Mr. Alexender Ashok, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
	:	Mr. Prakash Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 04-10-2024

1. The Writ Petition has been filed with a prayer to quash the order dated 25.11.2014 passed by the District Magistrate, Patna in Miscellaneous Case No. 12 of 2012-13.

2. The brief facts culled out of the writ petition are that the petitioner was constrained to file C.W.J.C. No. 17872 of 2012 which was disposed of by this Court on 25.09.2012 directing the District Magistrate, Patna to pass

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appropriate orders in light of the provisions contained under Section 164 of the Electricity Act, 2003 and Works of Licensee Rules, 2006 for shifting 11KAV line from the plot of the petitioner and further directed the District Magistrate to pass appropriate orders, basing on the representations filed by the petitioner within two months from the date of receipt of the representation.

3. Initially, the petitioner approached this Court in C.W.J.C. No. 17872 of 2012 seeking for a direction to the authorities of the State and Electricity Board to consider the request of the petitioner for shifting of 11KVA line from Plot No. 30, Khata No. 200 measuring an area of 1 Katha in the village of Balipakar, P.S. Paliganj, District Patna as the said line was obstructing the development of the plot and was also causing enormous financial loss to the petitioner.

4. This Court on considering the merits of the case has disposed of C.W.J.C. No. 17872 of 2012 on 25.09.2012. Later, the petitioner filed his representation dated 08.10.2012 before the District Magistrate, Patna as

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well as before the Executive Electrical Engineer, Bihta, Patna and after receiving the representation, the District Magistrate, Patna initiated Miscellaneous Case No. 12 of 2012-13 but as the District Magistrate, Patna has not passed any order for more than one and half year and the petitioner was constrained to file a contempt case before this Hon'ble High Court dated 24.06.2014 as M.J.C. Case No. 2264 of 2014. On 04.09.2014 a show cause was filed by the Opposite Party, Executive Electrical Engineer, Bihta, Patna stating that for shifting 11KAV line, the petitioner should deposit an amount of Rs. 15,603.00/- in the account of the company. Accordingly, on 27.09.2014 the District Magistrate, Patna passed orders in Miscellaneous Case No. 12 of 2012-13 directing the petitioner to deposit Rs. 15,603.00/- for shifting 11KAV line and directed the Electricity Department to remove the line from the aforesaid land within two months. On 18.10.2014 the Executive Electrical Engineer, Bihta, filed a Review Petition before the District Magistrate to review the order passed on 27.09.2014. On 01.11.2014 the

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petitioner filed a rejoinder against the Review Petition contending that the District Magistrate has no power to review its own order. On 25.11.2014 the District Magistrate, Patna again passed an order on the Review Petition in Miscellaneous Case No. 12 of 2012-13 directing the petitioner to deposit an amount of Rs. 15,603.00/- as supervision charges, on that the line could be transferred to another place after depositing an amount of Rs. 2,39,864.00/- or at the petitioner own expenditure.

5. It is specific contention of the Learned Senior counsel for the petitioner that the District Magistrate has no power to review its own order and the initial order of the District Magistrate, only directs the petitioner to deposit an amount of Rs. 15,603.00/- but the final order i.e. the review order disclose that apart from Rs. 15,603.00/- the petitioner also has to deposit Rs. 2,39,864.00/- which is bad in the eye of law. The orders passed by the District Magistrate, Patna caused great injury and the petitioner has to bear heavy expenditure for shifting the line to another place and therefore, prayed to

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set aside the review orders passed by the District Magistrate, Patna dated 25.11.2014 in Miscellaneous Case No. 12 of 2012-13.

6. A detailed counter affidavit was filed by the Respondent Nos. 3, 5 and 6 denying all the allegations made in the Writ Petition. It is specifically contended by the respondents that the Electricity Department appeared in Miscellaneous Case No. 12 of 2012-13 and further the site was inspected and possibility of shifting 11KAV line was examined on 24.07.2014, a diagram was prepared in the light of Standing Order No. 880 dated 28.03.2012, informing the petitioner under letter no. 676 dated 24.07.2014 regarding the deposit of Supervision charge of Rs. 15,603.00/-, in the account of the respondent and the entire cost of shifting of 11KAV would be borne by the petitioner and the respondent-company would only supervise the work of the petitioner. Further, the counter affidavit disclose that letter No. 676 dated 24.07.2014 issued by the Electricity Supply Division, Bihta, it was made clear that “technically sanctioned for Rs.

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2,39,864.00/- only under deposit head out of which Rs. 15,603.00/- only being chargable to the party as Supervision charges. The execution of work including supply of material will be carried out by the party, the dismantle of the company will be returned to Central Store, Digha by the party under the close supervision of concerned AEE, JEE with the Joint Inventory Report." On perusal of the letter vide Memo No. 676 dated 24.07.2014, it would be clear that the estimated cost was Rs. 2,39,864.00/- and Rs. 15,603.00/- was directed to be deposited by the petitioner by way of overlook vide order dated 27.09.2014. Therefore, there is no error in the orders passed by the District Magistrate in reviewing its own order and prayed to dismiss the writ petition as it is devoid of merits.

7. In order to support his contention the Learned Senior counsel for the petitioner relied on the judgment of ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Ors. reported in (2010)9 SCC 437*** in

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which Lordships of Hon'ble Apex Court has held at Para 12, 13, 14 and 15 as under:-

> ***Legal Issues***
>
> ***Review in absence of statutory provisions***
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> ***12.*** *It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641] .)*
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> ***13.*** *In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] , Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya*

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[(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] , State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. *Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.*

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Case dismissed/withdrawn — Effect on interim relief

15. *No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any*

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> *advantage on a party by the delayed action of the court. [Vide A.R. Sircar (Dr.) v. State of U.P. [1993 Supp (2) SCC 734 : 1993 SCC (L&S) 896 : (1993) 24 ATC 832] , Shiv Shankar v. U.P. SRTC [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018 : (1995) 30 ATC 317] , Arya Nagar Inter College v. Sree Kumar Tiwary [(1997) 4 SCC 388 : 1997 SCC (L&S) 967 : AIR 1997 SC 3071] , GTC Industries Ltd. v. Union of India [(1998) 3 SCC 376 : AIR 1998 SC 1566] and Jaipur Municipal Corpn. v. C.L. Mishra [(2005) 8 SCC 423] .]*

8. As per the above proposition of the Hon'ble Apex Court the District Magistrate cannot review its own order in the absence of any specific provision for reviewing the orders. The said principle applies to the present facts and circumstances of the case.

9. Heard the Learned Senior counsel for the petitioner as well as the Learned counsel for the respondents and perused the record.

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10. On perusal of the record, it is evident that the initial order passed by the District Magistrate directs the petitioner to deposit an amount of Rs. 15,603.00/- on the account of the respondent-Electricity Department. The amount of Rs. 2,39,864.00/- was not at all mentioned in the initial order. If at all the respondent Nos. 3, 5 and 6 are aggrieved by the order of the District Magistrate they ought to have file a Revision Petition before the Commissioner, without availing the remedy of revision, the respondents have filed a petition before the District Magistrate to review his own order and the District Magistrate has reviewed his previous order, directing the petitioner to pay an amount of Rs. 2,39,864.00/- along with an amount of Rs. 15,603.00/-.

11. It is pertinent to mention that the District Magistrate has no power to review its own order. Further, there is no provision under the Act for reviewing of the order by District Magistrate. Therefore, the orders of the District Magistrate in reviewing its own order is not

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sustainable as per the law and the same is liable to be set aside.

12. In result the writ petition is allowed setting aside the orders of District Magistrate, Patna dated 25.11.2014 in Miscellaneous No. 12 of 2012-13.

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

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
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