
(2017) 03 PAT CK 0048

In the Patna High Court

Case No : 190 of 2016

M/s Vishnu Sugar Mills Ltd.,

APPELLANT

Vs

The State of Bihar & Ors.

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Citation : (2017) 03 PAT CK 0048

Hon'ble Judges : Sudhir Singh

Bench : SINGLE BENCH

Advocate : Y. V. Giri, ?Ashish Giri, ?P. K. Verma, ?S. K. Sharma, ?Durgesh Nandan, ?Kiran Sinha

Final Decision : Allowed

Judgement

1. Challenge in all these appeals are made under Clause X of the Letters Patent to common order passed in various writ petitions on 01.10.2015 including three writ petitions filed by the appellant herein M/s Vishnu Sagar Mills Ltd. i.e. CWJC Nos.4625 of 2009, 4626 of 2009 and 4747 of 2009, by which a prayer made for quashing the certificate proceedings initiated against the petitioner under the Bihar Public Demand Recovery Act, 1914 and the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, has been rejected.

2. During the course of hearing of these appeals, it transpires that between the appellant-assessee and the State Government with regard to similar certificates issued for various years on earlier occasion, a writ petition filed being CWJC No.13121 of

2006 has been decided in favour of the appellant-assessee on 02.05.2014 and it is case of the appellant-assessee herein that once the lis with regard to same issue stands decided between the petitioner and the respondent-State Government vide order passed on 02.05.2014 in CWJC No.13121 of 2006, the said judgment operates as constructive res judicata and as the learned Writ Court has not taken note of this aspect of the matter, the appeals are liable to be allowed on this ground alone.

3. Learned Senior Counsel for the appellant Sri Y. V. Giri invited our attention to the findings recorded by the learned Writ Court on 02.05.2014 in CWJC No.13121 of 2006, particularly findings recorded with regard to certificates impugned being issued in violation to Sections 4, 5 and 6 of the Bihar and Orissa Public Demand Recovery Act, the requisitions not being in accordance to the Form- 2 and various other statutory violation noticed and found established in the earlier writ petition to argue that now when the same certificate issued is found to be illegal vis-?-vis the appellant and the State, the learned Writ Court has committed an error in ignoring this aspect of the matter and deciding the matter in a manner which is not permissible in law.

4. Sri Y. V. Giri, learned Senior Counsel for the appellant vehemently argued that the arguments in the original writ petitions were heard and the cases were closed for judgment but the judgment was pronounced after a period of more than one and half year, as a consequence thereof, an error has crept into the order, inasmuch as the earlier judgment in CWJC No.13121 of 2006 has not been properly taken note of.

5. However, Sri P. K. Verma, learned Additional Advocate General-3, appearing for the State, invites our attention to para-24 of the impugned judgment passed by the learned Writ Court and argues

that the effect of order passed in the earlier writ petition have been considered in paragraph 24 and the same having been rejected, the contention of the petitioner is not correct.

6. We find that while considering the effect of the order passed on 02.05.2014 in CWJC No.13121 of 2006, the learned Writ Court in paragraph 24 of the impugned order has only stated that the said judgment is distinguishable in fact and while doing so, has not taken note of the discussion in detail undertaken by the Writ Court from page 9 onwards up to page 21 with reference to the statutory provision to be fulfilled and the violation of the statutory provisions. In fact, if we go through the detailed judgment rendered on 02.05.2014 between the appellant and the State Government in CWJC No.13121 of 2006, we find that the learned Writ Court have considered various statutory provisions, the manner in which the certificates are issued and finding statutory violation in issuance of the certificates, somewhat in similar nature, have been quashed.

7. While addressing this issue, it is seen by us in the present proceedings that the learned Writ Court has not referred to the judgment rendered earlier on 02.05.2014 in the right perspective and various important issues arising out of the violation of the statutory provision have not been properly considered. That being so, it is a fit case where these three appeals should be allowed, order passed by the writ Court quashed and the matter remanded to the learned Writ Court for fresh consideration.

8. Accordingly, all these three appeals are allowed. The order passed by the learned Writ Court is set aside and the matter is remanded to the learned Writ Court for fresh consideration.