IN THE HIGH COURT OF JUDICATURE AT PATNA

Surendra Prasad Sharma & Anr.

vs.

The State Of Bihar & Ors.

Civil Writ Jurisdiction Case No.16140 of 2022

[WITH Civil Writ Jurisdiction Case No. 16145 of 2022; Civil Writ Jurisdiction Case No.16189 of 2022; Civil Writ Jurisdiction Case No.16192 of 2022; Civil Writ Jurisdiction Case No.16369 of 2022; Civil Writ Jurisdiction Case No.16500 of 2022; Civil Writ Jurisdiction Case No.16563 of 2022; Civil Writ Jurisdiction Case No.16640 of 2022; Civil Writ Jurisdiction Case No.16672 of 2022; Civil Writ Jurisdiction Case No.16677of 2022; Civil Writ Jurisdiction Case No.16683 of 2022; Civil Writ Jurisdiction Case No.16684 of 2022; Civil Writ Jurisdiction Case No. 16686 of 2022; Civil Writ Jurisdiction Case No.16687 of 2022; Civil Writ Jurisdiction Case No.16688 of 2022; Civil Writ Jurisdiction Case No.16713 of 2022; Civil Writ Jurisdiction Case No.16719 of 2022; Civil Writ Jurisdiction Case No.16720 of 2022; Civil Writ Jurisdiction Case No.16740 of 2022; Civil Writ Jurisdiction Case No.16995 of 2022; Civil Writ Jurisdiction Case No.17149 of 2022; Civil Writ Jurisdiction Case No.17210 of 2022 & Civil Writ Jurisdiction Case No.17289 of 2022]

30 January 2023

(Hon’ble Mr. Justice Purnendu Singh)

Issue for Consideration

- Whether Clause 17 of Minutes of the Meeting Dated 21.10.2022 passed under the Chairmanship of the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna is correct or not?
- Whether the restrictions imposed on the deed writers are reasonable?

Headnotes

Registration Act, 1908—Registration (Bihar Amendment) Act, 1991—Sections 68A, 68B, 69—Bihar Deed Writers Licensing Rules, 1996—Clause 17—Validity—petitioners are licensed deed writers under the Rules, 1996, challenged Clause 17 of the Minutes of Meeting issued by the

Authority—Clause sought to restrict registration through deed writers and promote modal deed-based online registration, allegedly violating statutory provisions and earlier High Court judgments.

Held: executive instructions cannot override statutory rights conferred under Sections 68A and 68B of the Act, 1908—Inspector General of Registration is the competent authority under Section 69 to frame rules—Oral directions or administrative resolutions by the Authority are without jurisdiction and contrary to law—impugned Clause was violative of Articles 14, 19(1)(g), and 21 of the Constitution of India, 1950 and earlier binding judgments.

Held: Authority committed jurisdictional error, has exercised arbitrarily, capriciously and perversely by directing orally his sub-ordinates, to restrain from accepting the deeds presented in own writing of the deed writers—Clause 17 of the Minutes of Meeting is ultra vires and unenforceable—Authorities were directed to honour the statutory rights of licensed deed writers and refrain from implementing any quota or slot system that undermines those rights—petitioners' rights as licensed deed writers remain protected under the Act, 1908 and the Rules, 1996—writ petition allowed. **(Paras 2, 13 to 15, 46, 52 to 59)**

Case Law Cited

Manohar Lal vs. Ugrasen & Ors., **(2010) 11 SCC 557**; Khoday Distilleries Ltd. & Ors. vs. State of Karnataka & Ors., **(1995) 1 SCC 574**; Akshay N. Patel vs. Reserve Bank of India, **(2022) 3 SCC 694**; Ugar Sugar Works Ltd. vs. Delhi Administration and Ors., **(2001) 3 SCC 635**; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., **(1986) 4 SCC 566**; Census Commissioner & Ors. vs. R. Krishnamurthy, **(2015) 2 SCC 796**; Dhirendra Kumar Rai vs. State of U.P., **2010 SCC Online All 1278** : **(2010) 5 All LJ (NOC 680) 158**—Relied Upon.

List of Acts

Constitution of India, 1950; Transfer of Property Act, 1882; the Bengal Tenancy Act, 1885; the Indian Stamp Act, 1899; Registration Act, 1908; Registration (Bihar Amendment) Act, 1991.

List of Keywords

document writer, licensed deed writer, statutory rights, ultra vires

Case Arising From

From Clause 17 of Minutes of the Meeting Dated 21.10.2022 passed under the Chairmanship of the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.

Appearances for Parties

(In Civil Writ Jurisdiction Case No. 16140 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Pawan Kumar (A.C. To A.G.)

(In Civil Writ Jurisdiction Case No. 16145 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Pawan Kumar (A.C. To A.G.)

(In Civil Writ Jurisdiction Case No. 16189 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp7)

(In Civil Writ Jurisdiction Case No. 16192 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16369 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp7)

(In Civil Writ Jurisdiction Case No. 16500 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc11)

(In Civil Writ Jurisdiction Case No. 16563 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc11)

(In Civil Writ Jurisdiction Case No. 16640 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16672 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16677 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16683 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16684 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16686 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16687 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16688 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16713 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s : Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16719 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16720 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc 11)

(In Civil Writ Jurisdiction Case No. 16740 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 16995 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vivek Prasad (Gp 7)

(In Civil Writ Jurisdiction Case No. 17149 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc11)

(In Civil Writ Jurisdiction Case No. 17210 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc11)

(In Civil Writ Jurisdiction Case No. 17289 of 2022)

For the Petitioner/s: Mr.Ranjeet Kumar

For the Respondent/s: Mr.Vikash Kumar (Sc11)

Headnotes Prepared by Reporter: Abhas Chandra.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16140 of 2022

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1. Surendra Prasad Sharma son of Sri Ramcharitra Singh Resident of Village- Halsi Lakhisarai, P.S. and District- Lakhisarai.
2. Pramod Kumar Ambashth, son of Sri Akhileshwar Prasad, Resident of Village- R. Lal College Road, Naya Bazar, Lakhisarai, P.S. and District- Lakhisarai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Munger Division, Munger.
6. The District Magistrate-Cum- District Registrar, Lakhisarai.
7. The District Sub Registrar, Lakhisarai.
8. The District Sub Registrar, Halsi.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16145 of 2022

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Chandeshwar Prasad Chaudhary Son of Ram Nath Chaudhary, Resident at and P.O.-Nirmali, Ward No.-03, Near Laxmi Narayan Temple, Main Road, P.S.-Nirmali, District-Supaul, Bihar, PIN-847452.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Supaul.
6. The District Magistrate-cum-District Registrar, Supaul.
7. The District Sub Registrar, Supaul.

8. The District Sub Registrar, Supaul.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16189 of 2022

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Raj Kishore Bhakt Son of Nathuni Bhakt, Resident of Salempur, P.O. - Aghaila, P.S. - Darauli, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-Cum-District Registrar, Siwan.
7. The Sub Registrar, Registry Office, Badhariya, District - Siwan.
8. The Sub Registrar, Registry Office, Darauli, District - Siwan.
9. The Sub-Registrar, Registry Office, Raghunathpur, District Siwan.
10. The Sub-Registrar, Registry Office Bhagwanpur, District - Siwan.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16192 of 2022

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Jai Ram Pandey Son of Shivlok Pandey, Resident of Sawan Bigrah, Maharajganj, P.S.- Maharajganj, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-Cum-District Registrar, Siwan.
7. The Sub Registrar, Registry Office, Badhariya, District- Siwan.

8. The Sub Registrar, Registry Office, Darauli, District- Siwan.
9. The Sub-Registrar, Registry Office, Raghunathpur, District- Siwan.
10. The Sub-Registrar, Registry Office Bhagwanpur, District -Siwan.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16369 of 2022

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Prakash Lal Srivastava Son of Late Ram Bilash Prasad Verma, resident of Village-Sareya, Ward No. 1, Shambhu Path Gopalganj, P.S.-Gopalganj, District-Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-cum-District Registrar, Gopalganj Sadar, Gopalganj.
7. The Sub Registrar, Registry Office Mirganj, District Phulwaria.
8. The Sub Registrar, Registry Office Sidhwaliya, District Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16500 of 2022

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Hareram Pandit Son of Ramjeet Pandit Resident of Village- Sahuli, Kuan ke pas, P.S.- Siwan, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-Cum-District Registrar, Siwan.
7. The Sub Registrar, Registry Office, Badhariya, District Siwan.

8. The Sub Registrar, Registry Office, Darauli, District Siwan.
9. The Sub-Registrar, Registry Office, Raghunathpur, District Siwan.
10. The Sub-Registrar, Registry Office, Bhagwanpur, District Siwan.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16563 of 2022

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Arvind Kumar Son of Late Chitragupta Lal, Resident of Mohalla-Bageshwari, P.S.- Delha (Kotwali), District- Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
6. The District Magistrate-Cum-District Registrar, Gaya.
7. The District Sub-Registrar, District Sub-Registry office, Gaya.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16640 of 2022

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1. Janardhan Singh Son of Late Shiv Pratap Singh, Resident of Akderwa, P.S.- Gopalganj, District- Gopalganj.
2. Om Prakash Srivastava Son of Late Yamuna Prasad, Resident of Village-Supaul, P.S.- Sidhwaliya, District- Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector Geneal of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.

5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-Cum-District Registrar, Gopalganj Sadar, Gopalganj.
7. The Sub Registrar, Registry Office, Mirganj, District Phulwaria.
8. The Sub Registrar, Registry Office, Sidhwaliya, District- Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16672 of 2022

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Md. Ovaidullah Son of Akhatar Hussain, Resident of Phenhara, East Champaran, P.S.- Phenhara, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub- Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub- Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub- Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub- Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub- Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub- Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub- Registry Office, Raxal, East Champaran.
15. The Sub Registrar, Sub- Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16677 of 2022

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Ram Avdhesh Singh son of Kailash Singh, Resident of Bakhari, Bakhari Bazar, East Champaran, P.S.- Patahi, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office,Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16683 of 2022

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Md. Mojahid Hussain Son of Md. Mojammil Hussain, Resident of Phenhara, P.S.- Pakridayal, District- East Champaran, Motihari.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department,

Government of Bihar, Patna.

5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub- Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub- Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub- Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub- Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub- Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub- Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub- Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub- Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub- Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16684 of 2022

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Ram Sagar Singh Son of Late Ram Balam Singh Resident of- Ward No. 6, Gonahi, P.S.- Pakridayal, District- East Champaran, Motihari.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Registrar, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, MotihariSadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.

12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16686 of 2022

Sanjay Kumar Singh Son of Raghunath Singh, Resident of Ward No. 4, Kalupakar, P.S.- Pakridayal, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar,Tirhut Division, Muzaffarpur.
6. The District Magistrate cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16687 of 2022

Mukesh Kumar Son of Shivsagar Prasad Resident of Ward 13, Devapur, East Champaran, P.S.- Patahi, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16688 of 2022

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1. Subhash Dubey Son of Poojan Dubey, Resident of Bada Badeya, Barauli, P.S.- Barauli, District- Gopalganj.
2. Mukesh Kumar, Son of Late Matuk Dev Prasad, Resident of Village-Kaithwaliya, P.S.- Kuchaykote, District- Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and

Prohibition Department, Government of Bihar, Patna.

5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-Cum- District Registrar, Gopalganj Sadar, Gopalganj.
7. The Sub Registrar, Registry Office, Mirganj, District Gopalganj.
8. The Sub Registrar, Registry Office, Sidhwaliya, District Gopalganj.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16713 of 2022

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Lalbabu Sah Son of Dukhan Sah, Resident of Ibrahimpur Parsauni, East Champaran, P.S. - Tenhara, District - East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16719 of 2022

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Ashok Kumar Verma Son of Kedar Prasad Resident of Village-Ward no.1, Rajepur, Dhaka, East Champaran, P.S.-Dhaka, District-East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration Excise and Prohibition Department Government of Bihar, Patna.
3. The Aditional Inspector General of Registration, Registration Excise and Prohibition Department Government of Bihar, Patna.
4. The Joint Secretary, Registration Excise and Prohibition Department Government of Bihar, Patna.
5. The Assistant Inspector General, Registration Excise and Prohibition Department Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16720 of 2022

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Mushtaque Ahmad Son of Md. Shafique, Resident of Sikandarpur Tola, Dewkuliya, East Champaran, P.S.- Deokulia, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Excise and Prohibition Department, Government of

Bihar, Patna.

5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub- Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub- Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub- Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub- Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub- Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub- Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub- Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub- Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub- Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16740 of 2022

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Devi Lal Sah Son of Lakshan Sah Resident of Mirjapur, P.S.- Pakridayal, District- East Champaran, Motihari.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub-Registry Office, Chhouradano, East Champaran.

12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16995 of 2022

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Mojammil Hussain Son of Md. Akhtar Hyssain, Resident of Phenhara, P.S.- Pakridatal, District East Champaran, Motihari.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary Registration department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector Genral of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate Cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Officer, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub-Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub-Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub-Registry Office Pakridayal, East Champaran
11. The Sub Registrar, Sub-Registry Office Chhouradano, East Champaran
12. The Sub Registrar, Sub-Registry Office Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran
14. The Sub Registrar, Sub-Registry Office Raxaul, East Champaran
15. The Sub Registrar, Sub-Registry Office Kesaria, East Champaran.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17149 of 2022

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1. Brahm Deo Prasad Kushwaha @ Brahm Deo Prasad Son of Late Angnu Mahto, Resident of Mohalla - Jamalpur, P.S. - Sheikhpura, District -

Sheikhpura.

2. Sajjan Singh Son of Late Girija Singh, Resident of Village - Kamta, P.S. - Sheikhpura, District - Sheikhpura.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Munger.
6. The District Magistrate-Cum-District Registrar, Sheikhpura.
7. The District Sub Registrar, Registry Office, Sheikhpura.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 17210 of 2022

Anil Kumar @ Anil Prasad son of Gujeshwar Prasad, Resident of Village- Sarari Tola Jalpurawa, Jalpurawa, Near Road, P.O.- Mustfabad, Pipra, Mustfabad, Siwan, P.S- Siwan, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Additional Inspector General Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Saran Division, Saran.
6. The District Magistrate-cum-District Registrar, Siwan.
7. The Sub Registrar, Registry Office, Badhariya, District- Siwan.
8. The Sub Registrar, Regustry Office, Darauli, District- Siwan.
9. The Sub-Registrar, Registry Office Raghunathpur, District- Siwan.
10. The Sub-Registrar, Registry Office Bhagwanpur, District- Siwan.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17289 of 2022

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Dinkar Prasad Son of Abhinandan Prasad, Resident of Ward No. 13, Devapur Patahi, Khori Pakar, East Champaran, P.S.-Patahi, District-East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration Department (Registration), Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Additional Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Assistant Inspector General Registration, Excise and Prohibition Department, Government of Bihar, Tirhut Division, Muzaffarpur.
6. The District Magistrate cum District Registrar, East Champaran.
7. The District Sub Registrar, District Sub-Registry Office, Motihari Sadar, East Champaran.
8. The Sub Registrar, Sub Registry Office, Kesariya, East Champaran.
9. The Sub Registrar, Sub Registry Office, Dhaka, East Champaran.
10. The Sub Registrar, Sub Registry Office, Pakridayal, East Champaran.
11. The Sub Registrar, Sub Registry Office, Chhouradano, East Champaran.
12. The Sub Registrar, Sub-Registry Office, Chakiya, East Champaran.
13. The Sub Registrar, Sub-Registry Office, Areraj, East Champaran.
14. The Sub Registrar, Sub-Registry Office, Raxaul, East Champaran.
15. The Sub Registrar, Sub-Registry Office, Kesaria, East Champaran.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 16140 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Pawan Kumar (A.C. To A.G.)
(In Civil Writ Jurisdiction Case No. 16145 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Pawan Kumar (A.C. To A.G.)
(In Civil Writ Jurisdiction Case No. 16189 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)
(In Civil Writ Jurisdiction Case No. 16192 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar

For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16369 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)
(In Civil Writ Jurisdiction Case No. 16500 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)
(In Civil Writ Jurisdiction Case No. 16563 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)
(In Civil Writ Jurisdiction Case No. 16640 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16672 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16677 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16683 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16684 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16686 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16687 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16688 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16713 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16719 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16720 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc 11)
(In Civil Writ Jurisdiction Case No. 16740 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 16995 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp 7)
(In Civil Writ Jurisdiction Case No. 17149 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)
(In Civil Writ Jurisdiction Case No. 17210 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)
(In Civil Writ Jurisdiction Case No. 17289 of 2022)
For the Petitioner/s : Mr.Ranjeet Kumar

For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 30-01-2023

Heard Mr. Ranjeet Kumar, learned counsel appearing on behalf of the petitioners and Mr. Vikash Kumar, learned SC-11 for the State.

2. The petitioner has filed the present writ petition *inter alia* filed for following reliefs:

> *"i. For setting aside Clause 17 of Minutes of the Meeting Dated 21.10.2022 passed under the Chairmanship of the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna, whereby General Slot of Registration through Deed Writters has been closed, in teeth of Section 68A & 68B of the Registration Act r/w The Bihar Deed Writers License Rule 1996 as also in gross violation and disregard of the Judgment Dated 17.09.2016 passed by this Hon'ble Court in CWJC No. 10973 / 2016, C.W.J.C. No.11384/ 2016 and analogous cases whereby the Hon'ble Court observed that so long as The Deed Writers License Rule 1996 is in force, the Deed Writers who have valid license cannot be restrained from writing documents for registration. (No formal order has been issued in the light of the said minutes of the meeting, but same has already been implemented throughout Bihar).*
>
> *ii.) For that the respondents authorities be directed to stop the slot system (25 Deed for each Slot) created during Pendemic COVID 19, for the reason that all issued by the Department of Home, Government of Bihar, Patna has been withdrawn, but the authorities of the Registration Excise and Prohibition Department, Government of Bihar, Patna is*

following the Slot system arbitrarily and with a view to frustrate the interest of Licensee (Deed Writers) in teeth of the Judgment Dated 17.09.2016 passed in CWJC No. 10973/ 2016, C.W.J.C. No.11384/ 2016 and analogous cases.

iii.) For that the petitioners further prays that the Quota System for Online Registration and Registration through Deed Writers be withdrawn, as it is being used to remove the Deeds from discharging their right to work as Deed Writers, which is; indirectly if not directly, in teeth of the Judgment Dated 17.09.2016 passed in CWJC No. 10973/2016, C.W.J.C. No.11384/ 2016 and analogous cases, and further the quota system for online registration and registration through Deed Writers is unknown to the Registration Act, 1908 and Rule framed there.

iv.) For taking strict punitive action against the authorities of the Registration, Excise and Prohibition Department, Government of Bihar, Patna, who by hooks and crooks trying to frustrate the outcome of the Judgment Dated 17.09.2016 passed in CWJC No. 10973 / 2016, C.W.J.C. No.11384/ 2016 and analogous cases and even cheated and ditch this Hon'ble Court in M.J.C. No. 1355/2022.

v.) For issuance of Direction to the Respondents authorities to allow the petitioners to work as Deed Writer and his hand written documents as well as his Drafted and computerized Documents with his signature be accepted for registration in the light of the Judgment 17.09.2016 passed in CWJC No. 10973/2016, C.W.J.C. No.11384/ 2016 and analogous cases.

vi.) For any other relief/reliefs for which the petitioners may be deemed entitled to."

3. Brief facts of the case are that an amendment was

brought in The Registration Act, 1908 (hereinafter referred to as 'the Act') vide Registration (Bihar Amendment) Act, 1991 (Act 6 of 1991). Following sections were inserted after Section 68:-

" 68-A ***Prohibition of unlicensed person-***

(1) No person who is not licensed as provided under Section 68-B, shall engage himself in the profession of document writer and document drawn up and signed by a person who does not hold a license shall not be accepted for registration by the Registring Officers;

Provided that no advocate, pleader or mukhtar shall be required to have a license under 68- B.

(2) Nothing in this section shall prohibit an executant of document to draw up a document to be presented for registration or to do any other act for himself for which a licensed document writer could have been otherwise engaged.

(3) Nothing in this section shall apply to document executed out of India or out of the State of Bihar or to a will or to document scribed by document writer holding license for one sub-district or one district and presented for registration in another sub district or another district, as the case may be, or to document executed by or on behalf of the Government or local authorities or other corporate bodies.

68B. ***Grant of license to document writers-***

(1) The Registrar of District or any other Officer authorized by him in this behalf may grant a license, to be valid in one sub district or one district in the prescribed form to document writer or apprentice to document writer on an application made in this behalf on such term and conditions as may be prescribed by the Inspector General of Registration in this behalf

after conducting a written test as may be prescribed.

(2) A license may be granted to any person who has been in the profession of the document writer for at least ten years prior to the date of Registration (Bihar Amendment) Ordinance, 1991 came into force, without requiring him to appear in the written test referred to in sub-section (i), if the Registrar of a District or any other officer authorized by him in this behalf is satisfied that he is otherwise fit to take the profession of a document-writer.

(3) A license granted under sub section 1 and 2 shall remain valid till the 31" day of December, of the year in which the same was issued and shall be subject to renewal before the expiry of its period of validity on such terms and conditions as may be prescribed.

(4) (a) The license granted under sections 1 and 2 may at any time, be suspended or cancelled on the breach of conditions prescribed or for such other reasons to be recorded in writing by the Registrar of district or the officer authorized y him after the document writer has been given sufficient opportunity to show cause against the proposed suspension or cancellation of the license and after the same has been duly considered.

(b) An appeal shall lie before the Inspector General of Registration against any order passed under this section."

4. Section 68-A provides that a person who is not a license holder in terms of Section 68-B, shall not engage himself as a document writer. A document drawn up and signed by a person who does not hold a license shall not be accepted for registration by the Registration Officers. Even an advocate, pleader or mukhtar are required to have a license under 68- B.

From careful perusal of Section 68-B it prescribes for preparation of hand written document to be prepared by an advocate, pleader or mukhtar or licensed person who are lincensee in terms of Section 68- A of The Registration Act, 1908. The explanation to Section 68-B define the word "Document writer" which means and includes one who is engaged in the profession of preparing documents, namely, doing the work of conveyancing, including investigation of titles, preparation of draft deeds and engrossing and transcribing the deed, including copies, if any, for registration or making searches and inspection under the Act.

5. Section 69 of the Act grants power to the Inspector General of Registration to superintend over the Registry Office and make Rules. This Section is relevant for the determination of the issue raised in the writ petition. Section- 69 is being reproduced herein below:-

> *"**69. Power of Inspector-General superintend registration offices and make rules.-***
> *(1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the [State Government), and shall have power from time to time to make rules consistent with this Act-*
> *(a) providing for the safe custody of books, papers and documents;*
> *[(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other*

electronic form under sub-section (1) of section 16A;]
(b) declaring what language shall be deemed to be commonly used in each district;
(c) declaring what territorial divisions shall be recognized under section 21:
(d) regulating the amount of fines imposed under sections 25 and 34, respectively;
(e) regulating the exercise of the discretion reposed in the registering officer by section 63;
(f) regulating the form in which registering officers are to make memoranda of documents;
(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;] (emphasis supplied)
(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;
(i) declaring the holidays that shall be observed in the registration offices; and
(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.
(2) The rules so made shall be submitted to the 1 [State Government for approval, and, after they have been approved, they shall be published in the 5 [Official Gazette), and on publication shall have effect as if enacted in this Act."

6. The Inspector General of Registration in exercise of power under Sub-clause (gg) of sub-section 1 of Section 69 of the Registration Act, 1908 framed "Bihar Deed Writers Licensing Rules, 1996."

7. The petitioners are licensee under the provisions of Bihar Deed Writer License Rule, 1996. They have been issued

license by the Licensing Authority, i.e., the District Magistrate. From perusal of Form- B under Rule 4, the Clause 6 of the Form B prescribes that the documents shall be transcribed by the deed writer. Form C is the format of the deed writers license and clause E of form prescribes regulating the exercise of the discretion reposed in the registering officer. Clause G provides power to Registrar and Sub-Registrar to regulate the authentication.

8. A letter contained in Memo No. 2867 dated 13.06.2016 was issued under the signature of the Principal Secretary, Registration, Excise and Prohibition Department, Bihar, Patna, who had issued instruction that no handwritten document shall be accepted for registration and only the printed/ typed document shall be accepted for registration. Aggrieved by the said instruction, petitioners along with other deed writers challenged the aforementioned order before this Court in CWJC No. 10973/2016, C.W.J.C. No.11384/ 2016 and analogous cases, which were heard together and disposed of vide judgment and order dated 17.09.2016. This Court after considering the Bihar Deed Writer Licensing Rules, 1996, Registration Act, 1908, Bihar Amendment Act, 2008 and also after considering the instruction issued by the department quashed the order as

contained in Memo No. 2867 dated 13.06.2020 and observed that the petitioners of the case i.e., the deed writers are eligible to prepare a document for registration in their handwriting/in ink (Annexure-1). The respondents authority thereafter withdrew the aforementioned Memo No. 2867 Dated 13.06.2016 vide another Letter No. 5697 Dated 09.11.2016 issued by the Assistant General of Registration, Registration Excise and Prohibition Department, Government of Bihar, Patna. The State Respondent did not file any appeal against the aforementioned judgment dated 17.09.2016 passed by this Court in CWJC No. 10973/2016 and other analogous cases.

9. On perusal of aforementioned judgment it will transpire that this Court duly observed that so long as the rule ie., the Bihar Deed Writers Licensing Rules, 1996 is existing, the right of the deed writers to prepare the document in their own handwriting specially in ink cannot be taken away by issuing executive instruction. This Court further observed that as per Section 63 of the Registration Act, 1908 the appropriate authority is the Inspector General of Registration and not the Principal Secretary of the Department, irrespective of the fact that he is the Senior most authority of the Registration, Excise and Prohibition Department in view of the well settled

proposition of law that if statutes provides a particular manner of exercise of power then the power must be exercised in particular manner only and not otherwise. Secondly, also in view of law laid down by the Apex Court that, if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words there cannot be abdication of power in favor of the Senior authority by the junior authority. This Court took reference of judgment delivered by Hon'ble Supreme Court of India reported in ***(2010) 11 SCC 557 Manohar Lal vs. Ugrasen & Ors.***, paragraph 12 to 23.

10. This Court observed that the appropriate authority as per the law is the Inspector General of Registration who can exercise power and the Principal Secretary in no case usurp the jurisdiction of the Inspector General of Registration.

11. The world, in the meantime, witnessed disastrous COVID 19 Pandemic and consequently Lock Down was implemented throughout India, including the State of Bihar and several Standard Operating Procedure (SOP's) for functioning of the Government offices maintaining social distancing etc.

were issued. The Registration Excise Prohibition Department, Government of Bihar, Patna considering the Standard Operating Procedure (SOP), came out with system of 4-5 slots; each slot having quota of 25 deeds only. Registration Department, came out with another order that those who adopt online process shall be given priority and their registration shall be made on the same day and those presented through Deed Writers, their registration shall be made on the next day. The registration department fixed quota that 75% registration shall be made through online system with priority registration and remaining 25 % registration through Deed Writers on the next day. Subsequently, the Additional Chief Secretary, Registration, Excise and Prohibition Department, Bihar, Patna passed a fresh order restricting the deed writers. Further, it was resolved and decisions were taken in a meeting convened on 14.07.2022 to allow registration only on modal deed i.e., 100 %, particularly in the District Registration Office Patna, Muzaffarpur, Bhagalpur, Gaya, Darbhanga and Sub-Registry office of Danapur and Phulwarishariff and in remaining District 75% documents were allowed to register online and only 25 % hand written or computerized and in any other form. On the basis of aforementioned minutes of the meeting dated 14.07.2022, a consequential letter was issued vide Letter No. 5381 dated 19.07.2022 under the signature of the Assistant Inspector General Registration, Bihar, Patna that w.e.f., 01.09.2022 whereby 100% registration shall be done only on modal deed in aforesaid documents.

12. The circumstances led to filing of contempt application bearing M.J.C.No. 1355 of 2022 and during pendency of the contempt proceeding, the State (opposite party) withdrew the Letter No. 5381 dated 19.07.2022 vide Order contained in Letter No. 4479 Dated 30.08.2022 issued under the signature of the Inspector General Registration, Bihar, Patna. The State (opposite parties) filed show cause and brought Letter No. 4479 Dated 30.08.2022 on record. Accordingly, M.J.C. No. 1355 of 2022 was disposed of vide Order dated 01.09.2022.

13. Petitioners are now aggrieved by the decision taken in meeting dated 21.10.2022 in which, as per Clause 17 of Minutes of the Meeting dated 21.10.2022, passed under the chairmanship of the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna, a policy adopted to increase the Registration through modal deed up to 50 % and through deed writers which may be 50 %.

14. The petitioners are aggrieved by the decision firstly to

be in gross violation of Article 14, 19(1)(g) and 21 of the Constitution and passed in willful disregard of the Judgment Dated 17.09.2016 passed in CWJC No. 10973/2016, C.W.J.C. No.11384/2016 and analogous (Annexure-2). Secondly, the respondent authorities, particularly the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna has got no jurisdiction contrary to the provision of Registration Act, 1908 and Rules 1996, as well as Bihar Deed Writer License Rule, 1996 to orally direct for registration of document on the basis of modal deed without amending the provisions of Rules and the terms of the license.

15. Learned counsel appearing on behalf of the petitioners submitted that the respondent- Additional Chief Secretary Registration Excise and Prohibition Department, Government of Bihar convened a meeting on 21.10.2022, and in terms of Clause 17 of the Minutes of the Meeting, they have resolved that general slot of registration has been chosen and has resorted to direct orally to all the Registrars and Sub-Registrars of the districts to allow Registration only on modal deed in terms of the earlier Letter No. 5381 dated 19.07.2022, which was withdrawn vide letter no. 4479 dated 30.08.2022.

16. Learned counsel informed that the Registry Office

and the District Registrar and the Sub-Registrar are entertaining instruments/documents prepared on the basis of modal deed only which is in gross violation and disregard of the Judgment and order dated 17.09.2016 passed in CWJC No. 10973/2016, C.W.J.C. No.11384/2016 and analogous cases. The petitioners are restricted from presenting hand written instruments on the basis of oral instruction of the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna, who has got no jurisdiction under the provision of Registration Act, 1908, as well as Bihar Deed Writer License Rule, 1996 to direct orally for registration of documents only on the modal deed and in no other form is in compliance of the oral direction the Registrar and the Sub-registrars of the district started not accepting deeds written by the deed writers which is in violation of Section 68 A of the Registration Act, 1908 so inserted by Registration (Bihar) Amendment Act, 1991. The express provision of the Bihar Registration Act, 1908, as well as Bihar Deed Writer License Rule, 1996 can not be bypassed by issuing executive instruction / oral direction by the Superior Authority of the Department and also taking into interest of the public at large. Learned counsel submitted that the minutes of agenda in Clause 17 of meeting dated 26.10.2022 recorded increase in 42% registration through modal deeds and orally directed to increase Registration through modal deed up to 50 % and through deed writer 50 % is illegal and without authority of law and any action on the basis of clause 17 of the meeting is required to be prohibited forthwith or the same will be violative Article 14, 19(1)(g) and 21 of the Constitution of India.

17. Learned counsel further submitted that it is well settled that an act which is directly prohibiting the Fundamental Right can not be allowed to be executed indirectly. The respondent authorities by issuing the oral order, if not directly, but indirectly have neutralized the judgment of this Hon'ble Court dated 17.09.2016 passed in CWJC No. 10973/2016. The action is contemptuous and in gross violation of specific direction and observation of this Court passed in CWJC No. 10973 of 2016. He further asserted that in fact, it will render the license deed writers redundant.

18. Learned counsel appearing on behalf of the respondent submitted that the facts of the present case are entirely different from the facts of the CWJC No. 10973 of 2016. In this regard he submitted that in the said case the issue was as to whether the Additional Chief Secretary, Registration Excise and Prohibition Department was competent to issue any

direction in terms of Section 68 A and 69 B of the Registration Act, 1908. In said context, this Court has held that in terms of Section 69 (1) of the Registration Act, 1908 the jurisdiction vested with the Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar and the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar has no jurisdiction. Learned counsel has relied on paragraph no. 2 of Page 127 which reads as under:

> ***"I have already discussed, the statutory provisions underlying Section 69(1) which vests exclusive jurisdiction in the Inspector General to frame rules consistent with 'the Act' and clause (bb) incorporated vide Bihar Act 14 of 1947 further empowers him to frame rules relating to grant of licence to the document writers, the suspension and cancellation of such license, the terms and conditions under which licenses can be granted and generally for all purposes connected with the writing of documents, to be presented for registration. 'The Act' thus confers exclusive jurisdiction in the Inspector General of Registration to frame rules relating to the grant of licenses of document writers or suspension/cancellation thereof."***

19. He further submitted that in light of the observation made in the above paragraph, this Court quashed the Memo No. 2867 dated 13.06.2016. In the present case, the petitioners is

aggrieved by Sub-Rule (h) of Rule 9 which is quoted hereinbelow:

> ***"9(h) that he shall obey any direction that may from time to time be issued by the licensing authority or the Inspector-General of Registration regarding the preparation and the transcription of documents or copies for Registration;"***

20. Sub-Rule (h) of Rule 9 empowers the Inspector General of Registration, Excise and Prohibition Department, Government of Bihar Patna do not prohibit to give oral direction as well as instruction in writing to all the Registrars to register deeds based on modal deed subsequent to the proceeding held on 17.10.2022 under the Chairmanship of Inspector General of Registration, Excise and Prohibition Department, Government of Bihar Patna. He refers to the minutes of proceeding contained in 'Annexure-E' which states as under:

> ***"The Registration of deeds on modal format is also beneficial for the following purposes written below:-***
>
> ***1. The modal format provides typed copy of document for registration purpose. The typed copy is comparatively more legible to hand written document.***
>
> ***2. Any correction/Interpolation in a document may easily be detected in a modal format/typed copy of a document.***
>
> ***3. The general public would be able to prepare the registrable documents at their own without any help of broker/touts which will also save time and extra***

expenses.

4. The modal format will also facilitate smooth functioning of on-line process of registration since the general public can prepare document and upload it at their own.

So all the facts enumerated above paves the way for implementing the process of registration on modal format prepared/developed and published by the department on its official website. All DSR/SR may be instructed to implement modal deed format for all types of deeds for convenience of the general public."

21. He further submitted that in terms of the Clause 17 of the Minutes of the Meeting dated 21.10.2022 which has been passed on administrative side by the Additional Chief Secretary, Registration Excise and Prohibition Department and communicated by the Assistant Inspector General Registration Bihar to all the Registrars and Sub-Registrars of the District that increased assessment of Registration through modal deeds to 42 percent registered during the period from 13.10.2022 to 19.10.2022.

22. He further submitted that the benefit of registration through modal deed has been summarized in Paragraph No. 18 of the counter affidavit for convenience it is reproduced here in below:

"a. The concept of modal deeds has been developed by the department with a view to safeguard the general public

exploitation at the hands of broker/touts connected with the registration offices.

b. The modal format provides typed copy of document for registration purpose. The typed copy is comparatively more legible to hand written document.

c. Any correction/interpolation in a document may easily be detected in a modal format/typed copy of a document.

d. The general public would be able to prepared the registrable documents at their own without any help of broker/touts which will also save time and extra expenses.

e. The modal format will also facilitate smooth functioning of on-line process of registration since the general public can prepared document and upload by themselves.

f. The modal deed format is made in easily comprehensible conventional language (rather than tough & unconventional words used by deed writers) which ordinary people (including the revenue courts & financial courts of today may understand."

23. Learned counsel submitted that there has been 20.15% increase in of taxes through registration based on modal deed. The revenue has almost increased 40% which amounts to Rs. 4199.43 crores from the period April 2022 to November 2022 in comparison to the revenue collected during the last financial year for the same period. Therefore a policy has been adopted to increase the Registration through modal deed up to 50 % and through deed writers which may be 50%.

24. Learned counsel further supported his submission on

the basis of the order passed by the learned Single Judge of this Court in CWJC No. 6708 of 2016 is reproduced hereinafter:

> ***"As per the provisions of the Rules, especially Rule 9 relating to Conditions of License, Sub-Rule (h) of Rule (9)(1) of the Rules reads as under: (h) that he shall obey any direction that may from time to time be issued by the Licensing Authority or the Inspector-General of Registration regarding the preparing and the transcription of documents or copies for Registration."***

25. Learned counsel in above background submitted that this Court must refrain from interfering with the policy which has been adopted in the interest of the public.

26. Having considered the rival submissions made by the learned counsels for the parties and based on the above facts main question arises for determination as to whether the Additional Chief Secretary, Prohibition and Excise cum Registration has any power on administrative ground or the Inspector General of Registration to orally direct the Registrar and Sub-Registrar of the districts to allow 50 % registration based on modal deed format in absence of any rules to have been promulgated under Section 69 (1) (b) of the Act to that effect or any amendment in the Rules, 1996. Secondly, such oral direction amounts to have rendered the licensee deed writers redundant and thirdly to have been issued in violation of the

judgment passed by this Court in CWJC No. 10973 of 2016 and other analogous cases vis a vis whether it is justifiable assessing the record increase in registration through modal deeds upto 42 %, which almost amounted 40 % increase in revenue in comparison to revenue collected in the last financial year.

27. The Registration Offices are the oldest Government Offices of the State Government tracing its origin to the year 1865, The law on registration was first enacted on the year 1864. The present form The Registration Act (Act. XVI of 1908) was enacted as Indian Registration Act, 1908 and was subsequently amended from time to time. The name “Indian” from the Indian Registration Act was omitted by Amendment Act No. 45 of 1969 w.e.f. 26.12.2969. This Office administers mainly The Registration Act, 1908 with Amendment Act 48 of 2001, and the Indian Stamp Act, 1899 along with other Acts like Special Marriage Act, 1954, along with the Rules Framed therein such as Odisha Registration Rules, 1988, Odisha Stamp Rules, 1952, The Odisha Supply and Sale of Stamps and Stamped Papers Rules, 1990, Odisha Money Lending Rules, Odisha Special Marriage Rules, 1965, Odisha Licensing of Deed Writer’s Rules, 1979. Etc.

28. The Registration Department is a service-oriented

department. But recently it has become revenue collection oriented department, which inseparably and inextricably connected with the society at large from "cradle to grave".

29. The main objective of Law of Registration is to provide a conclusive proof of genuineness of document, afford publicity to transaction, prevent fraud, afford facility for ascertaining whether a property has already been transacted and afford security of title deeds and facility of providing titles in case the original deeds are lost or destroyed. Registration department at present is one of the largest sources of revenue to the state exchequer. Registration law governs documents rather than transactions.

30. It will be convenient to set out relevant clauses of the Rule 6 of 'the Rules' and Rule 9(e) and (g) of the Bihar Deed Writers Licensing Rules, 1996, which are reproduced hereinafter:

> *"**6. Number of document writers.**- The Licensing Authority shall fix the number of licensed document writers for each subordinate registration office, keeping in view the requirements of the general public.*
>
> ***9. Conditions of license.**- (1) The following shall be the conditions of the document writers license:-*
>
> *(e) that he shall write or cause to be written documents legibly and in accordance with the instructions that may be issued from time to time by the licensing authority or the Inspector-*

General of Registration;

(g) that he shall write or cause to be written document carefully, properly and in clean and unambiguous terms;"

31. Various provisions are contained in Bihar Deed Writers Licensing Rules, 1996 for controlling and regulating the conditions of work of deed writers. The main purpose of these rules is to make provisions for granting license on certain conditions. In case of amendment or insertion of the rule so made shall be submitted to the State Government for approval, and, after they have been approved then the same is required to be published in the Official Gazette. The main benefit of licensed deed writers is to be within the precincts of Registration Office or the Sub-Registry office to write deeds and documents. Relevant Rules 13, 15 and 21 are reproduced as under:-

"13. Cancellation and suspension of licence. - *(1) The licensing authority may at any time suspend or cancel the licence of a document writer or apprentice on any of the following grounds:-*

(a) Violation of any of the rules or the conditions of the licences;

(b) Failure to attend the registration office for a period exceeding six months without a reasonable cause or without the leave or permission of the licensing authority or registering officer within whose jurisdiction he has been practising.

15. Power of Inspector General of Registration. - *Inspector- General of Registration* *shall have all the powers of a licensing authority given under these rules.*

21. Supervision and control. *- It will be the duty of the Sub- Registrar to see that the document writers attached to his office maintain the prescribed registers and receipt books in the proper manner and that no malpractices are adopted by any licensed document writer and licenced apprentices in any way so as to harass the public. If he finds any such case of malpractices he will immediately report the matter to his District Registrar for necessary action."*

32. Importantly, no violation of any terms of the license was found in the case of the petitioners or other similarly situated licensees, who were in the the majority. Inspite of the same, the Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna orally directed to close the General Slot of Registration through Deed Writers by Clause 17 of Minutes of the Meeting dated 21.10.2022 impugned in the present petition, directing as under:

" दिनांक–21.10.2022 को अपर मुख्य सचिव की अध्यक्षता में अपराह्न 03:30 बजे निबंधन पक्ष से संबंधित कार्यों की समीक्षात्मक बैठक की कार्यवाही ।

<u>ई–स्टाम्प बिक्री एवं ACC Counter के कार्यों की समीक्षा।</u>

1. निबंधन कार्योलयों में Bihar State Co-operative Bank Ltd. तथा सभी District Central Co-operative Bank के माध्यम से ई–स्टाम्प की बिक्री की समीक्षा के क्रम में SHCIL के प्रतिनिधि द्वारा बताया गया कि वर्तमान में कुल 131 निबंधन कार्योलयों में Co-operative Bank के माध्यम से ई–स्टाम्प की बिक्री की जा रही है।
2. Co-operative Bank द्वारा संचालित ACC Counter पर

POS Machine/QR Code लगाये जाने की समीक्षा अपर मुख्य सचिव द्वारा की गई। जिला अवर निबंधक/अवर निबंधक से प्राप्त प्रतिवेदन के आधार पर यह पाया गया कि 34 निबंधन कार्योलयों में POS Machine तथा 57 निबंधन कार्यालयों में QR Code के माध्यम से राशि जमा करने की सुविधा उपलब्ध है, किन्तु प्रबंध निदेशक Bihar State Co-operative Bank द्वारा बताया गया कि 43 निबंधन कार्यालयों में POS Machine तथा 49 निबंधन कार्यालयों में QR Code के माध्यम से ई–स्टाम्प की बिक्री की राशि जमा करने की सुविधा उपलब्ध करायी गई है।

3. अपर मुख्य्य सचिव द्वारा विभागीय पदाधिकारी को निदेश दिया गया कि POS Machine/QR Code संबंधी प्रतिवेदन प्रबंध निदेशक Bihar State Co-operative Bank को उपलब्ध करा दिया जाय ताकि भविष्य के समीक्षात्मक बैठकों में POS Machine / QR Code के संबंध में सहीं प्रतिवेदन रखा जा सके।

4. प्रबंध निदेशक Bihar State Co-operative Bank द्वारा बताया गया कि POS Machine/QR Code के माध्यम से ई–स्टाम्प की राशि जमा करने की सुविधा हेतु Bihar State Co-operative Bank के स्तर से District Central Co-operative Bank के स्तर से Axis Bank का चयन किया गया है।

Axis Bank के प्रतिनिध द्वारा बताया गया कि 06 निबंधन कार्यालयों में एक सप्ताह के अंदर POS Machin/QR Code की सुविधा उपलब्ध करा दी जायेगी तथा अन्य जगहों पर कागजी कार्रवाई पूरी करने के पश्चात् POS Machine/QR Code की सुविधा उपलब्ध करायी जायेगी।

5. अपर मुख्य्य सचिव द्वारा प्रबंध निदेशक Bihar State Co-operative Bank तथा सभी District Central Co-operative Bank को निदेश दिया गया कि दिनांक–28.10.2022 तक सभी निबंधन कार्यालयों के ACC काउन्टर पर POS Machine/QR Code की सुविधा उपलब्ध कराया जाना सुनिश्चित किया जाय।

6. माननीय उच्च न्यायालय सहित सभी व्यवहार न्यायालयों में Co-operative Bank के माध्यम से ई–कोर्ट फी की बिक्री किये जाने के संबंध में SHCIL के प्रतिनिधि द्वारा बताया गया कि प्रबंध निदेशक Bihar State Co-operative

Bank Ltd. से Agreement कर लिया गया है तथा व्यवहार न्यायालय, पटना में Co-operative Bank के माध्यम से ई–कोर्ट फी की बिक्री यथाशीघ्र प्रारंभ कर दी जायेगी।

अपर मुख्य सचिव द्वारा विभागीय पदाधिकारियों को निदेश दिया गया कि प्रत्येक दिन सुबह में किये जाने वाले समीक्षात्मक बैठक में इसका भी प्रतिवेदन रखा जाय कि 79 व्यवहार न्यायालयों में से कितने न्यायालयों में Co-operative Bank के माध्यम से ई–कोर्ट फीस की बिक्री की जा रही है।

7. अपर मुख्य सचिव द्वारा सभी जिला अवर fuca/kdksa@voj निबंधकों को निदेश दिया गया कि SHCIL के माध्यम से बिक्री किये जा रहे ई–स्टाम्प एवं ई–कोर्ट फीस की राशि राज्य सरकार के कोष में एकरारनामा के प्रावधानों के अनुरूप T+1 में जमा किये जाने की जाँच प्रत्येक कार्यदिवस में अपने स्तर से किया जाना सुनिश्चित की जाय।

8. Co-operative Bank के माध्यम से बिक्री किये जा रहे ई–स्टाम्प को निर्गत किये जाने की प्रणाली की समीक्षा की गई। समीक्षा के क्रम में SHCIL के प्रतिनिधि द्वारा बताया गया कि Co-operative Bank द्वारा उपलब्ध करायी गई राशि के मूल्य के बराबर ही SHCIL द्वारा स्आम्प निर्गत करने की सुविधा प्रदान की जाती है तथा SHCIL द्वारा T+1 में ई–स्टाम्प बिक्री की राशि राज्य सरकार के कोष में जमा किया जाता है।

इस संबंध में यह निर्णय लिया गया कि Co-operative Bak द्वारा स्वयं T+1 में ई–स्टाम्प बिक्री की राशि राज्य सरकार के कोष में जमा किया जा सकता है तथा इस संबंध में आवश्यक कार्रवाई किये जाने का निदेश अपर मुख्य सचिव द्वारा दिया गया ।

9. अपर मुख्य सचिव द्वारा प्रबंध निदेशक Bihar State Co-operative Bank Ltd. को निदेश दिया गया कि ई–स्टाम्प बिक्री हेतु अधिष्ठापित काउन्टरों का प्रत्येक माह ऑडीट कराया जाना सुनिश्चित किया जाय।

<u>स्थल जाँच की समीक्षा</u>

10. दस्तावेजों के निबंधन के सलि जाँच से संबंधित विभाग द्वारा निर्गत पत्र के संबंध में सभी जिला अवर निबंधकों को निदेश दिया गया कि समाहर्त्ता–सह–जिला निबंधक से संपर्क स्थापित कर स्थल निरीक्षण करने वाले पदाधिकारियों को

प्राधिकृत कराया जाना सुनिश्चित किया जाय।

दस्तावेजों के डिजिटाईजेशन की समीक्षा

11. दस्तावेजों के डिजिटाईजेशन की समीक्षा के क्रम में अपर मुख्य सचिव को अवगत कराया गया कि 20 (बीस) जिलों में डिजिटाईजेशन का कार्य प्रारंभ कर दिया गया है। अपर मुख्य सचिव द्वारा दस्तावेजों के डिजिटाईजेशन हेतु चयनित एजेन्सी के प्रतिनिधि को निदेश दिया गया है कि सभी निबंधन कार्यालयों में डिजिटाईजेशन का कार्य शीघ्र प्रारंभ किया जाना सुनिश्चित किया जाय।

Suo Moto Mutation

12. राजस्व एवं भूमि सुधार विभाग द्वारा दिये गये निदेश के आलोक में निबंधित दस्तावेजों का Suo Moto Mutation किये जाने हेतु विवरणी भेजने की समीक्षा की गई तथा समीक्षोपरान्त इसे बंद किये जाने का निर्णय लिया गया।

रजिस्ट्री शटल की समीक्षा

13. निबंधनार्थी जनता के सुविधा हेतु चलाये गये ''**रजिस्ट्र शटल**'' नामक वाहनों की समीक्षा की गई तथा समीक्षोपरान्त पाया गया कि आम जनों द्वारा दस्तावेजों के निबंधन में '**रजिस्ट्र शटल**'' वाहन सेवा के प्रयोग में कम रूची दिखाई जा रही है । अतः '**रजिस्ट्र शटल**'' नामक वाहन सेवा को दिनांक– 31.10.2022 से बंद करने का निर्णय लिया गया।

उच्च न्यायालय में लंबित वादों की समीक्षा

14. निबंधन कार्यालयों में उपलब्ध अभिलेखों में संधारित माननीय उच्च न्यायालय से संबंधित वादो की समीक्षा के क्रम में यह पाया गया कि माननी उच्च न्यायालय में प्रतिशपथ–पत्र दायर करने हेतु लंबित वादों की संख्या–15 है। अतः संबंधित सभी जिला अवर निबंधकों /अवर निबंधकों को निदेश दिया गया कि यथाशीघ्र लंबित वादों में प्रतिशपथ–पत्र दायर किया जाना सुनिश्चित की जाय।

अन्य कार्यालयों में भेजे गए दस्तावेज/अभिलेख

15. अपर मुख्य सचिव द्वारा निबंधन कार्यालयों के दस्तावेज /अभिलेख अन्य कार्यालयों यथा न्यायालय / समाहरणालय / समाहर्त्ता के यहाँ भेजे गए संबंधी प्रतिवेदन की समीक्षा के क्रम में यह पाया गया कि 1190 दस्तावेजों में से 487 दस्तावेज ही निबंधन कार्यालयों को प्राप्त हुए हैं। इस संबंध में सभी जिला अवर निबंधकों को निदेश दिया गया कि जिला एवं सत्र न्यायाधीश से निजी संपर्क स्थापित कर दस्तावेजों की वापसी सुनिश्चित किया जाय।

<u>रोक सूची की समीक्षा</u>

16. अपर मुख्य सचिव द्वारा निबंधन कार्यालयों में संधारित रोक सूची में दर्ज मामलों की समीक्षा के क्रम में सभी जिला अवर निबंधकों को निदेश दिया गया कि समाहर्त्ता–सह–जिला निबंधक से संपर्क स्थापित कर नियमानुसार रोक सूची के प्लॉटों (खेसरा) को हटाया जाना सुनिश्चित किया जाय।

<u>मॉडल डीड के माध्यम से दस्तावेजों का निबंधन की समीक्षा</u>

17. <u>मॉडल डीड के माध्यम से दस्तावेजों का निबंधन किये जाने की समीक्षा की गई। समीक्षोपरान्त पाया गया कि दिनांक–13.10.2022 से 19.10.2022 तक राज्य में कुल निबंधित दस्तावेजों का 42 प्रतिशत दस्तावेजों का निबंधन मॉडल डीड के माध्यम से हुआ है। (emphasis supplied)</u>

<u>MPLS/VPN Connectivity की सुविधा की समीक्षा</u>

18. MPLS/VPN Connectivity की सुविधा हेतु चयनित एजेन्सी एयरटेल के कार्यो की समीक्षा के क्रम में पाया गया कि 79 निबंधन कार्यालयों में MPLS/VPN Connectivity की सुविधा उपलब्ध करा दी गई है।

19. निबंधन कार्यालयों में आने वाले आम–जनों में से एक गरीब / ग्रामीण महिला / विकलांग के दस्तावेज का निबंधन मॉडल डीड के माध्यम से निबंधन पदाधिकारियों के सहयोग से किये जाने संबंधी फोटो का अवलोकन किया गया।

सधन्यवाद बैठक की समाप्त की गयी।

ह0/– अस्पष्ट
26.10.22
(मनोज कुमार संजय)
सहायक निबंधन, महानिरीक्षक
बिहार, पटना।''

33. After the above meeting, the Additional Chief Secretary took decision to direct all the Registrar and Sub-Registrar to accept registration upto 50 % through modal deed and through deed writers which may be 50 %. The petitioners claim that such oral direction makes unconstitutional discrimination between two classes of deed writers. It is said

that the Rules governing the licensed deed-writers under the Rules made by Notification a licensed deed-writer has to satisfy the conditions laid down in the Rules. In the first place, these licensed deed-writers have to possess practical knowledge of the important provisions of the Transfer of Property Act, 1882, the Bengal Tenancy Act, 1885, the Indian Stamp Act, 1899, and the Indian Registration Act, 1908.

34. The discrimination is alleged to be on the ground that the majority of licensed deed-writers have been rendered redundant by adopting the policy which hit the licensed deed writers occupation of writing deeds and charge fees for themselves and is the source of livelihood of licensed deed-writers.

35. It is this introduction of a new policy that infringes their fundamental rights under Article 19(1)(g) and creates unconstitutional inequality prohibited by Article 14 of the Constitution.

36. This Court finds it gainful to reproduce operating part of the order dated 17.09.2016 passed in CWJC No. 10973 of 2016 which is reproduced hereunder:

> *"I have already discussed, the statutory provisions underlying Section 69(1) which vests exclusive jurisdiction in the Inspector General to frame rules consistent with 'the Act' and clause (bb)*

incorporated vide Bihar Act 14 of 1947 further empowers him to frame rules relating to grant of licence to the document writers, the suspension and cancellation of such license, the terms and conditions under which licenses can be granted and generally for all purposes connected with the writing of documents, to be presented for registration. The Act' thus confers exclusive jurisdiction in the Inspector General of Registration to frame rules relating to the grant of licenses of document writers or suspension/cancellation thereof."

37. This Court held in the said judgment that the provisions confirm that it is the Inspector General, Registration who is vested with the jurisdiction to frame Rules, which is consistent with the Act and even if the Principal Secretary in the department of Registration Excise and Prohibition is an authority superior in hierarchy cannot exercise powers to issue such directions bearing statutory character, much less a direction which is inconsistent with the 'Act'.

38. This Court has held that the Memo No. 2867 dated 13.06.2016 passed by the Principal Secretary, Department of Registration, Excise and Prohibition to be without jurisdiction and in violation of the statutory provision of Section 69(1) and also inconsistent with Clause (bb) incorporated vide Bihar Act 14 of 1947. The action cannot be held in confirmity with Rule 2 (g) of Licensing Rules framed under Section 69(1)(bb) of the

Act which defines Licensing Authority to mean the Register of a District and includes any other officer authorized on his behalf of any order passed by the Licensing Authority to cancel their license of document writers or apprentice of any of the ground supported under Rule 13 is appealable before the Inspector General of Registration under Rule 14 and who also is vested with power of licensing authority under Rule 15.

39. The Rule 6 prescribes for preparation of documents. Rule 7 provides for presentation of documents. On perusal of the two relevant Rules also the preparation of document based on modal deed has not been provided or procedure has been provided for presentation of modal deed based documents.

40. It is now well settled that the citizen has the right to carry on profession, any occupation, trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the profession, trade or business.

41. The State can adopt any mode with a view to maximize its revenue so long as the method adopted is not discriminatory.

42. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the

State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. The State can, however, under Article 19 (6) place reasonable restrictions on the right to profession, any occupation, trade or business in the interests of the general public.

43. In order to test the claim of the petitioners, it is required to be tested on the ambit of the freedom envisaged under Article 19(1)(g). The relevant freedom and restrictions with respect to trade under the Indian Constitution.

44. The Hon'ble Supreme Court even in excise matter in case of ***Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.***, reported in ***(1995) 1 SCC 574***, excise policy was questioned to have affected the right to carry on trade and business in potable liquor has held as under:

> ***"(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1) (a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution. (emphasis supplied)***
> **(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is**

inherently vicious and pernicious, and is condemned by all civilised socities.”

45. Taking note of several judicial pronouncements, The Apex Court in ***Akshay N. Patel vs Reserve Bank of India*** reported in ***(2022) 3 SCC 694*** in paragraph no. 16 held as follows:

> *“16. This Court has also consistently held that restrictions on the freedom to carry on trade and business can take the form of a complete prohibition [Narendra Kumar v. Union of India, AIR 1960 SC 430] . However, in B.P. Sharma v. Union of India [B.P. Sharma v. Union of India, (2003) 7 SCC 309] , a two-Judge Bench of this Court has espoused a higher threshold for imposition of a prohibitive restriction. A legitimate object and prejudice to the general public by non-imposition of such prohibition has to be demonstrated by the State, to discharge its burden of demonstrating reasonableness under Article 19(6). Brijesh Kumar, J. held : (SCC pp. 318-19, para 15)*
> *15. The freedom under Article 19(1)(g) can also be completely curtailed in certain circumstances e.g. where the profession chosen is so inherently pernicious that nobody can be considered to have a fundamental right to carry on such business, trade, calling or profession like gambling, betting or dealing in intoxicants or an activity injurious to public health and morals. It may be useful to refer to a few decisions of this Court on the point at this stage viz. in Saghir Ahmad v. State of U.P. [Saghir Ahmad v. State of U.P., (1955) 1 SCR 707 : AIR 1954 SC 728] and J.K. Industries Ltd. v. Factories and Boilers [J.K. Industries Ltd. v. Factories and Boilers, (1996) 6 SCC 665 : 1997 SCC (L&S) 1] . The main purpose of restricting the exercise of the right is to strike a balance between individual freedom and social control. The freedom, however,*

> *as guaranteed under Article 19(1)(g) is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing a complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and in case of non-imposition of such prohibition, it may result in jeopardizing or seriously affecting the interest of the people in general. If it is not so, it would not be a reasonable restriction if placed on exercise of the right guaranteed under Article 19(1)(g). The phrase "in the interest of the general public" has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals...."*(emphasis supplied)

46. The question arises whether the restrictions imposed on the deed writers are reasonable?

47. This Court in exercise of its powers of judicial review cannot interfere with the policy decisions of the State, unless the same can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness. As held by the Hon'ble Supreme Court in ***Ugar Sugar Works Ltd. vs Delhi Administration and Ors.*** reported in ***(2001) 3 SCC 635.***

> ***"18…….The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."***

48. ***In State of M.P. & Ors. v. Nandlal Jaiswal & Ors.,***

reported in ***(1986) 4 SCC 566***, the Hon'ble Supreme Court in a case relating to the liquor policy of the State has interfered with the policy for violation of Article 14 even no one has Fundamental Right to trade in excisable items in terms of the mandate of Article 47 of the Constitution has gone to the extent to hold *inter alia* as follows:-

> ***"34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v. Union of India [(1981) 4 SCC 675 : 1982 SCC (Tax) 30 : AIR 1981 SC 2138 : (1982) 1 SCR 947]. Pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of problems required to be dealt with, greater play in the joints has to be allowed to the legislature.***
>
> ***What we said in that case in regard to***

legislation relating to economic matters must apply equally in regard to executive action in the filed of economic activities, through the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call' trial and error method' and, therefore, its validity cannot be tested WP(C) No. 3494/2020 Page 20 on any rigit „a priori" considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or ' Play in the joints' to the executive." The problem of government " as pointed out by the Supreme Court of United States in Metropolis Theatre Co. v. State of Chicago [57 L Ed 730] (emphasis supplied)
"***are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void." (emphasis supplied)***

49. Thus the Citizen has been protected to the effect that the State cannot make discrimination between citizens who are qualified to carry on trade or business or profession. The State can adopt policy with a view to maximize its revenue so long as the method adopted is not discriminatory and in the said case the Apex Court has observed as follows:-

> ***"34…….The Government, as was said in Permian Basin Area Rate cases [20 L Ed (2d) 312], is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide."***

50. The Apex Court in ***Census Commissioner & Ors. v. R. Krishnamurthy*** *reported in* ***(2015) 2 SCC 796*** held as follows:

> ***"33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion."***

51. The Hon'ble Allahabad High Court in case of Dhirendra Kumar Rai Vs. State of U.P. reported in **2010 SCC OnLine All 1278 : (2010) 5 All LJ (NOC 680) 158,** where the malafide action of the police authority was questioned after analysing the fact of the said case, has placed reliance upon

following judgments of the Apex Court in paragraphs which have been reproduced hereunder:

" 26. In Sharp v. Wakefield, reported in 1891 AC 173, 179, Lord Halsbury rightly observed as under:-

"[D]iscretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion….. according to law and not humour. It is to be, not arbitrary,

vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself…."

27.Hon'ble Supreme Court in a case reported in 2004 (2) SCC 590; Union of India v. Kuldeep Singh has held that the discretion is to know through law what is just. To quote:-

"Discretion is to know through law what is just. Where a judge has and exercises a judicial discretion his order is unappealable unless he did so under a mistake of law or fact or in disregard of principle, or after taking into account irrelevant matters. It will help to show this if it can be shown that there were no materials on which he could exercise his discretion in the way he did……"

Their Lordships of Hon'ble Supreme Court further proceeded to hold as under:-

"20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of

> ***their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary)***

21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office out to confine himself (per Lord Halsbury, L.C., in Sharp v. Wakefield). (Also see S.G. Jaisinghani v. Union of India)

22. The word "discretion' standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. "The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper and passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable." Said Lord Camden, L.C.J., in Hindson and Kersey".

28. In view of above in case the statutory discretion vests in an authority then such discretion should be exercised not in arbitrary, whimsical and fanciful manner. It must be reflected from the outcome of event that the authority concerned has exercised discretion within the sound principle of law, skill and wisdom with vigilant circumspection and care. The discretionary power imposes a heavy responsibility on a person or authority. The latitude or liberty accorded by statute, Circular or Order to the higher authority does not

permit to exercise such power in unjust and unfair manner. In the case of Kuldeep Singh (supra), their Lordships of Apex Court further held as under:-

"If a certain latitude or liberty is accorded by a statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of discretion, and prevents it from being wholly absolute, capricious, or exempt from review."

29.Hon'ble Supreme Court in the case of State of U.P. v. Mohd. Nooh reported in 1958 SC 86, Pratap Singh v. State of Punjab reported in AIR 1964 SC 72, Fashih Chaudhary v. D.G. Doordarshan reported in 1989 (1) SCC 189 held that if the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, a Court can interfere. In such an eventuality, mere fact that there is denial of allegation of malafide or oblique motive or of its having taken into consideration improper or irrelevant matter does not preclude the court from enquiring into the truth of allegations levelled against the authority and granting appropriate relief to the aggrieved party.

30. In number of cases Hon'ble Supreme Court ruled that every arbitrary action, whether in the nature of legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution of India vide AIR 1974 SC 555; E.P. Royappa v. State of Tamil Nadu, 1979 (3) SCC 489; R.D. Shetty v. International Airport Authority, 1978 (1) SCC 248; Maneka Gandhi v. Union of India, 1981 (1) SCC 722; Ajay Hasia v. Khalid Mujib, 1990 (3) SCC 223; Shri Sitaram Sugar Co. Ltd. v. Union of India.

31. In M.I. Builders Pvt. Ltd. v. Radhey Shyam reported in (1999) 6 SCC 464, the Apex Court ruled that the decision is unlawful if it is one to which no reasonable authority could have come.

32. The Constitution Bench of Hon'ble Supreme Court in a case reported in AIR 1991 SC 101; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others had repelled the presumption that person holding high office does not commit wrong. Discretion enjoyed by the persons holding high offices should not be left to the good sense of individuals. Relevant portion from the judgment of Delhi Transport Corporation (supra) is reproduced as under:- "There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do

not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law. 25. The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissenting opinion in Moti Ram Deka v. General Manager, N.E.P. Railways, Maligaon, Pandu, (1964) 5 SCR 683: (AIR 1964 SC 600) had given vent to it, Das Guptam H. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148(3) of the Railways Establishment Code, had not supported that view and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the Rule as being void on account of the discrimination it introduced between railway servants and other government servants."

33. The Supreme Court in 2005 (5) SCC 181; State of NCT of Delhi and another v. Sanjeev alias Bittoo upheld the right of judicial review under Article 226 on the basis of illegality in decision making process coupled with irrationally and perversity. While holding that decision is irrational and Court may look into the material on record. (Paragraphs 16, 17 and 21)

Hon'ble Supreme Court further held in the case of Sanjeev (supra) that if the administrative or judicial power has been exercised on non-consideration or non-application of mind to relevant factors, such exercise shall stand vitiated. Relevant portion from the judgment of Sanjeev (supra) is reproduced as under:-

"If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

34.In Centre for Public Interest Litigation and another v. Union of India reported in 2005 (8) SCC 202, the Hon'ble Supreme Court reiterated the settled proposition of law that every administrative action

should be reasonable and fair. Hon'ble Supreme Court further held that the procedure adopted by the Administrative body should not be only fair but also seems to be just, fair and proper.

36. In the famous Minerva Mills Ltd. v. Union of India case reported in AIR 1980 (2) SCC 1789, the Apex Court held that the High Court can substitute its own finding in case an action is found to be wrong. The controversy was relating to Government right to exercise power under Article 352 of the Constitution of India but the Supreme Court had given emphasis to exercise power to preserve the constitutional rights of the people of country. For convenience relevant portion from Minerva Mill case (supra) is reproduced as under:-

"Para 79 Three Articles of our Constitution, and only three stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Article 14, 19 and 21. Article 31 C has removed two sides of that golden triangle which affords to the people of this Country an assurance that the promise held forth, by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual."

"para 103 It will be convenient at this stage to consider the question as to whether and if so to what extent, the Court can review the constitutionality of a proclamation of Emergency issued under Art. 352 Cl. (1). There were two objections put forward on behalf of the respondents against the competence of the Court to examine the question of validity of a proclamation of Emergency. One objection was that the question whether a grave emergency exists whereby the security of India or any part thereof is threatened by war or external aggression or internal disturbance is essentially a political question entrusted by the Constitution to the Union Executive and on that account, it is not justiciable before the court. It was urged that having regard to the political nature of the problem, it was not amenable to judicial determination and hence the court must refrain from inquiring into it. The other objection was that in any event by reason of Cls. (4) and (5) of Article 352, the Court had no jurisdiction to question the satisfaction of the President leading to the issue of a proclamation of Emergency or to entertain any question regarding the validity of the Proclamation of Emergency or its continued operation. Both these objections are in view unfounded and they do not bar judicial review of the validity of the Proclamation of Emergency issued by the President under Article 352 Cl. (1). My reasons for saying so are

as follows."

"Para 104 …….So long as the question is whether an authority under the constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so. I have said before, I repeat again, that the Constitution is suprema lex, the paramount, law of the land, and there is no department or branch of government above or beyond it. Every organ or government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority and whether it has done so or not I for the court to decide. The court is the ultimate interpreter of the Constitution and when there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this court as much as to other branches of government, is committed the conservation and furtherance of constitutional values. The Court's task is to identify those values in the constitutional plan and to work then into life in the cases that reach the court. "Tact and wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too." The Court can not be and should not shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this country………………………"

58.The Constitution is organic body and it has to cope up the situation with the change of time. While there is fall of morality in public life and arbitrariness in administration is not uncommon, to meet the situation, the Court shall cross the Wednesbury doctrine. Unreasonableness, justness and fairness in action are the grounds to interfere under Art. 226 of the Constitution of India.

59. Apart from this, when an action suffers from mala fide or oppression or bias, the courts may lift the veil to find not only the motive behind action but correctness of the allegations raised against a person."

52. The action of the Additional Principal Chief Secretary shows that he has not only committed jurisdictional error, but the available records reflect that, without regard to the facts and laws, by exercising his pure will and whims, has exercised arbitrarily, capriciously and perversely by directing

orally his sub-ordinates, the Registrar and Sub-Registrar to restrain from accepting the deeds presented in own writing of the deed writers.

53. The respondent no. 2 must restrain himself in future from exercising power in an unwarranted manner.

54. In the present case in view of the averments made in the counter affidavit the respondents have admitted that Clause 17 of the Minutes of Meeting dated 21.10.2022 passed under Chairmanship of the Additional Chief Secretary Registration, Government of Bihar has been resolved on the administrative side and orally communicating the District Registrar and Sub-Registrar of the District by directing them to increase registration through modal deed up to 50% and restricting it to 50% through the deed writers, is based on such measures adopted during COVID-19 period. Such measures were in view of SOP of the Government, therefore, no rules were framed as per the provision of Section 69(1) Sub-Rule (bb). by the Inspector General, Registration.

55. The policy to allow modal based registration in the present case can be an aspect of reasonable restriction in the interest of general public. The Inspector General, Registration cannot at the same time direct the Registrar and the Sub-

Registrar of the District to restrain themselves from accepting the deed prepared by the deed writers as on date in absence of any Rules having framed in exercise of power under Section 69(1) in accordance with the provisions of Section 68 (A) and 68(B) of the Act. As on date the respondents have also not challenged the order dated 17.09.2016 passed in CWJC No. 10974 of 2016 nor have changed any condition of the license.

56. It is trite law that a court of law is not expected to propel into " the unchartered ocean" of State' s policies, The State has the power to frame and reframe, change and rechange, adjust and readjust policy, but in want of any authority of law can be declared as illegal and arbitrary without jurisdiction.

57. This Court having found that the respondents are themselves to be blamed for not having promulgated necessary rules to give effect to the policy decision taken by them on account of 42 percent increase in registration of modal deeds which resulted into increase in 20.15 percent registration of taxes and revenue has increased almost 40 percent during the period of April, 2022 to November, 2022 and adopting a policy to increase registration through modal deed up to 50 percent and through deed writers which may be 50 percent. In absence of necessary rules to give effect to the policy are themselves to be

blamed in absence of necessary rules framed under Section 69 (bb), such administrative action cannot be allowed to be implemented orally which is totally arbitrary, discriminatory and malafide and violative of Article 14, 19(1)(g) and 21 of the Constitution of India.

58. I accordingly direct that until the State comes with specific Rule for registration based on modal deed and change the terms and conditions of license, the right of the hundreds of the deed writers cannot be defeated by rendering them redundant by not accepting hand written deed even there being no violation of any terms and conditions of the license must not be further prohibited in any manner in presenting deed documents drawn in their handwriting for registration.

59. In view of the discussions made hereinabove, I find merit in the present petition. The same is allowed. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	04.03.2023
Transmission Date	N/A