

Amar Aaron Vs. the State of Bihar and ors

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Court : Patna

Decided On : Sep-02-2013

Appellant : Amar Aaron

Respondent : The State of Bihar and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case
No.6948 of 2000

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Amar Aaron, S/o Late Hudson Aaron, C/o Mr. Kameshwar Prasad Singh, resident
of Mohalla-North Mandiri, Opposite-Christian Colony, P.S.-Budha Colony, P.O. &
G.P.O.-District and Town-Patna Petitioner Versus

1. The State of Bihar through District Magistrate, Patna
2. The District Magistrate, Munger
3. The Additional District Magistrate-Incharge, District General Section, District-
Munger
4. Bank of India, through its Chairman, Head Office, Express Towers, Nariman
Point, Mumbai-400021 Respondent/s with Letters Patent Appeal No. 1462
of 1999 IN Civil Writ Jurisdiction Case No. 9607 of 1997

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1. Bank of India, Head Office, Express Towers, Nariman Point, Mumbai-400021
Through its Zonal Manager

2. The Zonal Manager and Appellate Authority, Bank of India, Zonal Office, Bihar
North Zone, Chanakaya Place, Birchand Patel Marg, Patna

3. The Chief Regional Manager and Disciplinary Authority, Bank of India, Patna
Region, Chanakya Place, Birchand Patel Marg, Patna-800001
Respondents-Appellants Versus

1. Amar Aaron , S/o Late Hudson Aaron, resident of Christian Colony, P.S. Budha
Colony, Lodhipur, Patna Petitioner-Respondent

2. Sri N.K. Singh, Enquiry Officer, Bank of India, Bihar North Zone, Chankya
Place, Birchand Patel Marg, Patna-800001 . . Respondent-Respondent with
Letters Patent Appeal No. 1482 of 1999 IN Civil Writ Jurisdiction Case No. 9607 of
1997

=====

Amar Aaron , S/o Late Hudson Aaron, resident of Christian Colony, Lodipur P.S.
Budha Colony, Lodhipur, Patna Petitioner-Appellant Versus

1. Bank of India, Head Office, Express Towers, Nariman Point, Mumbai-400021
Through its Chairman

2. The Zonal Manager and Appellate Authority, Bank of India, Zonal Office, Bihar
North Zone, Chanakaya Place, Birchand Patel Marg, Patna

3. The Chief Regional Manager and Disciplinary Authority, Bank of India, Patna
Region, Chanakya Place, Birchand Patel Marg, Patna-800001 Patna High Court
CWJC No.6948 of 2000 dt.04-09-201

4. Sri N.K. Singh, Enquiry Officer, Bank of India, Bihar North Zone, Chanakya
Place, Birchand Patel Marg, Patna-800001 Respondents-Opposite Parties
..... Respondents

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Appearance : (In CWJC No. 6948 of 2000) For the Petitioner/s : Mr. Madhuresh

Prasad & Mr. Abhay Shankar, Advocates For the State : Mr. Anjani Sharan (SC9)
For B.O.I. : Mr. Rupak Kumar, Advocate (In LPA No. 1462 of 1999) For the
Appellant/s : Mr. Rupak Kumar For the Respondent/s : Mr. Madhuresh Prasad Mr.
Abhay Shankar (In LPA No. 1482 of 1999) For the Appellant/s : Mr. Madhuresh
Prasad Mr. Abhay Shankar For the Respondent/s : Mr. Anjani Sharan (GP

9) Mr. Rupak Kumar

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CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA and HONOURABLE MR.
JUSTICE VIKASH JAIN C.A.V.

JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA) Date:

04. 09-2013 Navin Sinha & We have heard Learned Counsel for the Appellant and
the Respondents. Vikash Jain, J.J.

The issues for decision in this batch of cases are integrally connected, have a bearing on each other, and the parties are the same. We have therefore heard the cases together and are disposing it by a common order. The core controversy is the caste certificate of Sri Amar Aaron (for convenience referred to as the employee) as Scheduled Tribe (Kisan) and the consequent termination of his service by the Bank on the allegation for having secured appointment on a false caste certificate. Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 3 The Sub-Deputy Collector, Munger on 16.10.1973, issued a Caste Certificate to the employee as belonging to Scheduled Tribe (Kisan). The District Welfare Officer, Munger, issued Caste Certificate no. 1060/73 dated 18.10.1973 in the prescribed format, which stated that he belongs to Sub-caste which is recognized as Scheduled Caste in the Scheduled Castes and Scheduled Tribes list Modification Order 1956. The employee is stated to have been a minor aged approximately 15 years that point of time. Unlike the former certificate, the latter is ambiguous. It does not state that he belonged to any specified Scheduled caste, much less the name of any sub-caste. It also mentions the words Scheduled Tribe. The Bank issued an Advertisement in 1976 for Class-III posts which the employee joined in 1978. He mentioned his caste status as Scheduled Tribe (Kisan) and furnished

Caste Certificate No. 1060/73 dated 18.10.1973. The Bank required him to submit a fresh caste certificate issued by an officer not below the rank of a Sub-divisional officer. On 15.07.1976 the Sub-Divisional Officer, Sadar, Munger, issued Certificate No. 253 of 1976 certifying him to be Scheduled Tribe (Kisan) recognized as Scheduled Tribe under the Scheduled Tribes (Modification Act, 1956). The Sub-Divisional Officer, Sadar Munger, on 18.01.1985 confirmed having issued the Caste Certificate No. 253 of 1976 dated 15.07.1976. These certificates were submitted to the Bank. On 11.07.1982 a complaint is alleged to have been written to the Bank on behalf of a political functionary that the employee did not belong to Scheduled Tribe. It has been argued that the author denied having made any complaint alleging forgery; we do not consider it very relevant. The Bank issued a show cause notice on 25.11.1988 for having obtained employment on the basis of misrepresentation with regard to Caste. Dissatisfied with the reply Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 4 departmental proceedings were initiated by framing charges on 13.03.1989. It culminated in an order for dismissal dated 22.07.1997. The termination was set aside in CWJC 960 of 1997 on 30.09.1999 holding that it was the State authorities alone who were competent to decide his caste status. The State authorities at Patna, in the meantime by orders dated 04.08.1996 and 14.02.1991 cancelled his caste certificate issued by the authorities at Munger. The employee challenged the orders in CWJC 245 of 1997. The writ application was allowed on 2.9.1998 holding that the cancellation orders were procedurally flawed. Directions were given to decide afresh. CWJC 960 of 1997 which was disposed subsequently on 30.9.1999, therefore ordered that the order of termination shall abide by the fresh decision to be taken by the State authorities pursuant to the order in CWJC 245 of 1997. If the authorities decided in favour of the employee, the order of termination shall be recalled along with reinstatement and full back wages. If the District Magistrate decides otherwise the termination shall require no interference. Both the employee and the Bank have filed the present two separate present Appeals against the order. Pursuant to the order in CWJC 245 of 1997, a show cause notice was issued to the employee by the District Magistrate, Munger on 03.11.1998. It stated that fresh hearing was to be held with regard to the Caste Certificate No. 253 of 1976 dated 15.07.1976 and called calling upon him to present his case with relevant papers such as proof

of permanent residence along with land documents, Khatian entries, School Certificate, Permanent residence Certificate, Voters list, a certificate of permanent residence from the local officer and a Caste-Cum-Residence certificate countersigned by the Sub-Divisional Officer and any other paper sought to be relied upon. Significantly as noticed in CWJC 960 of 1997, it was the caste certificate no.1060/73, dated 18.10.1973 which Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 5 had been cancelled on 4.8.1986/14.2.1991. The caste certificates dated 16.10.1973 and Certificate No.253/76 dated 15.7.1976 had never been cancelled. The employee submitted a detailed reply with all supporting materials. He furnished his School Leaving Certificate, Residential Certificate, Voters List and Caste Certificate issued by the Sub-Divisional Officer (Munger). He also gave a brief account of his lineage and connections with the District of Munger. Significantly he relied upon the earlier caste certificate dated 16.10.1973 issued by the Sub-deputy Collector, Monghyr, and Certificate no. 253/76 dated 15.7.1976 asserting that they had been issued after full enquiry. That his cousin brothers and sisters, all of whom were named, were possessed of Scheduled Tribe Caste Certificate issued by the District Magistrate, Munger and the Sub-Divisional Officer, Munger. The District Magistrate, Munger on 29.11.1998 held that all the evidence produced by the employee did not lead to any conclusive opinion that he belonged to the Scheduled Tribe (Kisan) community. The order did not mention that the employee belonged to any other caste. This order has been challenged in CWJC 694 of 2000. No counter affidavit has been filed by the State authorities in the writ application despite passage of inordinately long period of time. In absence of a counter affidavit, the issuance of more than one Caste certificate to the employee we considered it proper to call for the original file to satisfy ourselves what kind of enquiries were held by the authorities when the Certificate dated 16.10.1973, certificate no. 1060/73 dated 18.10.1973, Certificate no. 253/76 dated 15.07.1976 and confirmation dated 15.01.1985 were issued by the authorities at Munger. When the records were not produced we directed the personal appearance of the District Magistrate, Munger. The District Magistrate appeared before us and submitted that the original official files are Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 6 not traceable as records are destroyed after twelve years. We are surprised at the submission by a senior

officer of the rank of District Magistrate. If the issue was sub-judice since 1997, preservation of records was the duty of the respondents for rendering proper assistance and adjudication. Learned counsel for the employee submitted that the impugned order dated 29.11.1998 was completely vitiated in the law and arbitrary. It abdicates jurisdiction in decision making to the Bank. The order takes into consideration the earlier order canceling his caste certificate no.1060/73 dated 18.10.1973 which had already been set aside by the Court and directions had been given to decide afresh. In the facts of the case, the onus lay with the authorities if they dispute the earlier certificates. The onus has wrongly been shifted to him without the authorities discharging the first onus. There is no discussion in the order why more than one earlier caste certificates issued to him as Scheduled Tribe kisan were all erroneous. There shall be a presumption that the earlier caste certificates were issued after proper inquiry and verification. It is not the case of the respondents that the earlier caste certificates issued in his favor was forged or fabricated much less that it was issued by authorities incompetent to do so. Once a decision had been taken with regard to his caste status after inquiry, there is no justification for the authorities to reopen matters more than two decades later and that too at the dictates of the bank on inconclusive materials to arrive at a speculative finding. The employee has been subjected to sufficient harassment and deserves to be reinstated with all consequential benefits. None of the documents called for from him in the show cause notice contained any column regarding caste. Learned counsel for the State submitted that the employee on his own showing in the reply to show cause converted to Christianity and therefore the Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 7 question of his being a Scheduled Tribe does not arise. We do not find any such contention made by the employee in his reply. No such ground was mentioned in the show cause notice issued to the employee. It was next submitted that the Court, in the present proceedings on 23.

4. 2009, had opined to carry the inquiry of his caste status further by examining the recitals in the gift deed referred to in the reply. If the order dated 29.11.1998 was erroneous in the opinion of the Court, the matter may be referred to the Caste Scrutiny Committee for determination of his Caste status. Learned counsel for the Bank submitted that the caste status of the employee is a disputed question of fact

which cannot be examined in the writ jurisdiction relying on A.I.R 199.SC 250.(Om Prakash V. State of U.P.) and A.I.R 200.SC 1469.R. Vishwanatha Pillai v. State of Kerala). Further inquiry is needed in the matter. The employee having obtained the job on basis of a false caste certificate the order of termination requires no interference relying on [1994] 6 SCC 241(Madhuri Patil V. Comm.,Tribal Development) and [1999] 7 SCC 29.(Chairman, Grid Corporation of Orissa Ltd(Gridco) V. Sukamani Das) We have considered the submissions made on behalf of the parties. The show cause notice issued to the employee was not a notice to show cause in the law as it called upon him to lead his defence without specifying the charge why and on what materials/ reasons the authorities were prima facie of the opinion that he had obtained a wrong Caste certificate. It simply states that pursuant to the order in CWJC 245 of 1997, hearing was proposed in respect of his Caste certificate no. 253/76. He may submit such papers as he may seek to rely upon. None of the documents mentioned by the respondents required to be produced carried any column with regard to the caste status and where therefore wholly irrelevant. The issuance of a show cause notice is not an empty ritualistic Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 8 formality. It is a facet of natural justice and the first opportunity to the employee for convincing the authorities of the correctness of his caste status and the matter to be dropped. Unless the employee is first told in the show cause notice the reasons why the authorities doubt his caste status and certificates, what does the employee answer. For a show cause notice to be valid, it must give the employee an insight to the mind of the authority and then only can the employee give a meaningful reply. The importance of a show cause notice was observed in (2010) 13 SCC 42.(Oryx Fisheries (P) Ltd. v. Union of India) as :- 26.S.R. Das, C.J.

speaking for the unanimous Constitution Bench in Khem Chand held that the concept of reasonable opportunity includes various safeguards and one of them, in the words of the learned Chief Justice, is: (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and

prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show- cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. The question for our consideration in judicial review is whether the Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 9 order dated 29.11.1998 has been arrived at in accordance with law. If the authority had posed unto itself the correct question to arrive at a correct conclusion. Did the decision maker take into consideration all relevant materials and eschew all irrelevant materials. Is the order reasoned and discussed displaying full application of mind with reasoning in support of the conclusion. If the order is vitiated for any reason, it has to be set aside. It shall not be our jurisdiction in judicial review to hold further inquiry in the matter. We may appropriately refer to the observations in CWJC 960 of 1997 to conclude that we cannot usurp jurisdiction. The principles which shall guide us in exercising judicial review were noticed in (2006) 8 SCC 20.(Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel) observing :

14. In Council of Civil Service Unions v. Minister for the Civil Service Lord Diplock enunciated three grounds upon which an administrative action is subject to control by judicial review viz. (i) illegality, (ii) irrationality, and (iii) procedural impropriety. While opining that further development on a case-by-case basis may not in course of time add further grounds he added that the principle of proportionality may be a possible ground for judicial review for adoption in future. Explaining the said three grounds, Lord Diplock said: By illegality he means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it, and whether he has or has not, is a justiciable question; by irrationality he means Wednesbury unreasonableness. It applies to a decision

which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it; and by procedural impropriety he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunals jurisdiction is conferred, even where such failure does not involve any denial of natural justice. Patna High Court CWJC No.6948 of 2000 dt.04-09-201

18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision. It is not the case of the State authorities that the caste certificates issued in favor of the employee on 16.10.1973, Certificate number 253/76, dated 15.7.1976 and confirmation dated 15.1.1985 were done without application of mind or inquiry. These certificates never came to be cancelled. It has already been held in CWJC 960 of 1997 that it was only the certificate no.1060/73 dated 18.10.1973 which had been cancelled by the authorities and which was set aside by the Court in CWJC 245 of 1997. Necessarily, inquiries must have been held by the authorities before issuance of the former certificates. It is not the case of the State authorities in the impugned order that the certificates were forged or fraudulent, much less they had been

issued by authorities not competent to do so or without any inquiry. There shall be a presumption for correctness of these Caste certificates. The presumption may be rebuttable. But Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 11 for that purpose the onus shall rest on the State authorities to record reasons why the earlier certificates were bad. Section 114 [e] of the Indian Evidence Act, 1872 provides that all official acts have been regularly performed. Section 114 (f) provides for a presumption that the common course of business had been followed in particular cases. Last but not least keeping in mind our order to produce the original files which have not been placed before us Section 114 (g) provides that evidence which could be and is not produced raises a presumption that it would have been unfavorable to the person who withholds, it if it was produced. No evidence by way of the destruction register or the relevant law in that regard has been placed before us. In (2007) 12 SCC 23.(Aloke Nath Dutta v. State of W.B.) it was observed :- 121..If a public authority does not produce a document despite being called upon to do so, an adverse inference is to be drawn. Converse is not the law. 123..There was no reason for the court to draw an adverse inference that the records had been destroyed. No such inference could be drawn in law either in terms of Section 114 of the Evidence Act or any other law. The period during which such documents are preserved under the provisions of the jail manual have not been referred to. No evidence had been brought on record to show that the documents had in fact been destroyed. The least the jail authorities could do was to produce the destruction register. The decision making process as evident from the discussion in the order dated 29.11.1998, to our mind is completely vitiated. The orders dated 4.8.1986 and 14.2.1991 canceling his earlier Caste certificates as Scheduled Tribe kisan having been set aside in CWJC 245 of 1997, did not survive at all as an order. Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 12 The authorities committed gross irregularity when they arrived at the conclusion that it required no interference. The orders having been set aside by the Court, the question of the authorities relying upon a dead order or resurrecting to life an order given quietus by the Court does not arise. The onus lay on the respondents to arrive at a fresh determination of his caste status. It was wrongly shifted to the employee. The impugned order is completely vitiated when it holds that the employee had not been able to substantiate his caste status as Scheduled Tribe

kisan. The respondents posed unto themselves a wrong question and have naturally arrived at a wrong conclusion. It was for the authorities to reason and hold that the earlier caste certificates declaring him to be a Scheduled Tribe were erroneous for specified reasons. There is no discussion with regard to these certificates being wrong including his contention that all his cousins, named by him, possessed Scheduled caste certificates. This Court in CWJC 960 of 1997 had held that the State authorities alone were competent to decide his Caste status. Contrary to the same, the impugned order refers to the request made by the Regional Manager, Bank of India by letter no.3990 dated 12.1.1991 requesting for cancellation of his Caste certificates as forged and that he had obtained employment with the Bank on basis of such a false caste certificate. Last but not the least, the conclusion is not that the employee does not belong to the Scheduled Tribe kisan, but that he had failed to satisfy the authorities from the nature of evidence submitted by him to conclusively hold that he belonged to the Scheduled Tribe. If he did not belong to the Scheduled Tribe kisan there had to be finding with regard to his correct caste identity. It is a speculative and negative finding. Considering the consequences for the employee the respondents were required to arrive at a positive finding. Suspicion cannot replace proof. The duty of the respondents Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 13 was to arrive at a positive finding. In 1989 Supp (2) SCC 2.(An Advocate v. Bar Council of India) it was explained and observed :

4. ii) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. Madhuri Patil and R. Vishwanatha Pillai (supra) relied upon by the Bank has no application to the case in absence of any finding by the District Magistrate that the employee had obtained any false caste certificate. No disputed facts arise for our consideration to apply the principles in Gridco and Om Prakash (supra). The list of Notified Scheduled Tribes published in the Scheduled Tribes order 1950, describes kisan as sub-caste of Scheduled Tribe at serial 18, it again figures at

serial 19 of the Scheduled Caste /Scheduled Tribes Order (Amendment Act), 1976. The job and livelihood of the employee was at stake. If he had obtained employment on basis of a false Caste certificate, the law had to take its course. We are not sanguine that considering the consequences that were to ensue for the employee the respondents have displayed adequate sensitivity and responsibility. The employee has been subjected to unnecessary harassment at the hands of both the Bank and the State authorities who have acted casually and irresponsibly in the entire issue. Under normal circumstances we may have remanded the matter. But considering the several rounds of litigation, the opportunity given to the authorities by more than one order of the Court, and the Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 14 passage of time we are not inclined to do so. We are satisfied that the controversy must now be given a quietus. The question for grant of back wages has undergone some paradigm shift. Yet the issue remains in the realm of discretion to be exercised on the facts of each case. No strict or rigid formula can be enunciated either for grant or refusal. Much will depend on the facts of each case for the manner in which discretion is to be exercised. In the present case, the employee has tenaciously pursued matters since 1997 having to fight a multi-pronged attack by the Bank and the State authorities. We have seen there was no iota of material before them to raise any suspicion with regard to his caste certificate. The opportunity given to the State by the Court has been exercised in reckless arbitrariness. This Court in CWJC 960 of 1997 had already observed that in event of success the employee shall be entitled to full back wages. In (2009) 3 SCC 12.(Novartis India Ltd. v. State of W.B.) it was observed :- 36..The fact that they survived and did not die of starvation itself could not be a ground for denying back wages to them. Even an unemployed person has a right to survive. He may survive on his past savings.. In (2009) 9 SCC 59.(C.N. Malla v. State of J&K) it was observed :-

11. The legal position is fairly settled by a catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is inbuilt in such exercise. The court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts. The order dated 29.11.1998 is set aside. The employee is held

entitled to Patna High Court CWJC No.6948 of 2000 dt.04-09-2013 15 reinstatement with full back wages in accordance with the observations and directions contained in CWJC 960 of 1997 to be complied within a maximum period of 4 weeks from the date of receipt and/or production of a copy of this order. LPA numbe

62. of 1999 and LPA number 1482 of 1999 are disposed as infructuous. CWJC 694 of 2000 is allowed with costs. (Navin Sinha, J) (Vikash Jain, J) - I agree. (Vikash Jain, J) Patna High Court, Dated, 4th September, 2013 NAFR/Chandran

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