
(2001) 07 JH CK 0008
In the Jharkhand High Court
Case No : C.W.J.C. No. 924 of 2001

Arbind Kumar Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Jhar 15

Hon'ble Judges : Vinod Kumar Gupta, C.J.; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Apresh Kumar Singh, for the Appellant; M.M. Banerjee, A.G., Devi Prasad and Anil Kumar Sinha and Manoj Prasad, Anil Kumar, Nilesh Kumar, Vimal Kumar and A.I. Shukla, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—Mr. Devi Prasad, learned Sr. Counsel appearing for the respondent No. 5, has filed in the Court the reply to the counter-affidavit earlier filed on behalf of the State of Jharkhand. It may be noted that the same respondent had earlier filed his own counter-affidavit. In that counter-affidavit, in para 10 the deponent had averred that it was unfortunate that the Chief Secretary in spite of the order passed by the Chief Minister in the file had not acted in accordance with the order of the Chief Minister. The relevant extract from para 10 of that affidavit reads thus :--

"It is unfortunate that the Chief Secretary in spite of the order passed by the Chief Minister in the file has not acted in accordance with the order of the Chief Minister."

2. What has been filed today by the respondent No. 5 is his reply to the counter-affidavit on behalf of the State of Jharkhand. The State of Jharkhand through the Energy Secretary, Government of Jharkhand, filed its counter-affidavit in this Court on 29th May, 2001, in which the deponent (Sri Radheshyam Poddar,

Energy Secretary, Jharkhand) clearly states that he has been duly authorised and otherwise is competent to swear this affidavit on behalf of the State of Jharkhand. In the face of the aforesaid filing of the detailed counter-affidavit by and on behalf of the State and the claimed authorisation and competence by the Energy Secretary in a matter which vitally concerns Public Interest and is directly relatable to an important State function, the filing of "reply" by the respondent No. 5 to the "counter-affidavit" of the State, to say the very least appears very very unusual. In this reply-affidavit, the respondent No. 5 opens up by saying in para 2 that the counter-affidavit of the State has been filed without any consultation with respondent No. 5. In para 3, he says that perusal of the counter-affidavit of the State shows that it has been filed at the instance of the Chief Secretary and is against the instructions given by respondent No. 5 and on that ground, therefore, according to him, the counter-affidavit of the State "is liable to be ignored". Various other averments have been made in this reply-affidavit which do appear to be direct in the line of confrontation with the stand taken by the State in the counter-affidavit filed on its behalf by the Energy Secretary.

3. Which affidavit do we rely upon? Do we rely upon the affidavit filed on behalf of the State by its Energy Secretary? Or do we rely upon the affidavit filed by the respondent No. 5 in the Court today? If we adopt the latter course and rely upon the affidavit of the respondent No. 5, what is the stand of the State Government before us? Additionally, if we do rely upon the affidavit of respondent No. 5 filed today, do we reject the stand of the State Government as set up in the affidavit filed by the Energy Secretary? Our understanding prima facie is that the State functions through its Secretaries and the Chief Secretary. Our understanding also prima facie is that the affidavit filed by the State through the Secretary of the concerned Administrative Department, on the face of it should be taken as the "statement" made in the Court on behalf of the State. This understanding of ours appears to be fortified and buttressed by the fact that from the perusal of the original files given to us earlier by the State, we find that on 27th May, 2001, the Advocate General of the State of Jharkhand had made a noting on the file that draft affidavit prepared by the Department, meaning thereby the Secretary of the Department of Energy, was comprehensive enough and that after necessary corrections it should be approved and filed in the Court. This note of the Advocate General of the State of Jharkhand was submitted to the Chief Minister, who has accorded his approval to the same. There does thus ex facie appear to us one fact on the basis of the aforesaid, at least as on date, that the affidavit filed by the Secretary on behalf of the State has been prepared by an Office and Department which is competent to do so, that it has been approved by no less a person than a constitutional functionary, the Advocate General of the State and that finally on being submitted for approval, it has been approved by the Chief Minister of the State. In this affidavit, a definite stand has been taken by the State with regard to the subject-matter of this writ petition. This affidavit indeed is very comprehensive and details various aspects of the controversy forming the

subject-matter of this petition. In the face of these facts, therefore, on the principles of the collective responsibility of the Cabinet System with which we are governed, the question which may arise for our consideration is as to whether it was open to the respondent No. 5 to have taken a stand in his reply-affidavit that the affidavit earlier filed by the State should be ignored. If this Court, accepting the stand of the respondent No. 5, does decide to ignore the affidavit filed by the State through the Energy Secretary, what is the version before this Court as far as the State is concerned? None. Would this Court, therefore, have to work in a limbo in deciding this matter without the version of the State? These are some of the very important questions of constitutional law which may have to be decided in this petition.

4. Why did the respondent No. 5 have to file his reply to the counter-affidavit of the State? Respondent No. 5 is a mere co-respondent with the State in a legal battle between the petitioner and the State. By filing his reply to the counter-affidavit of the State (respondent No. 5) being a co-respondent was not actually required to file any reply to the counter-affidavit of the State, hasn't respondent No. 5 embarked on a very unusual course vis-a-vis State itself? This may be the other question which we may require to consider in this petition.

5. Since the issues are of vital constitutional importance, we request the learned Advocate General to convey our these observations to the Government of Jharkhand and report to us as to how does the Government of Jharkhand intends to deal with and react upon these issues and what is the response of the Government of Jharkhand to the points raised by us in this order.

6. Coming back to the main controversy with regard to the appointment of persons on the post of Chairman and Members of the State Electricity Board, a perusal of the files given to us by the learned Advocate General suggests to us that some more information is required by us from the State Government. We accordingly direct the learned Advocate General to file an affidavit of the State with regard to the procedure adopted by it in selecting the present incumbents to the office of the Chairman and the Members and claims of these persons for being appointed to these posts and as to whether any wider selection and consideration process was invoked in making selections to this public office, as important as the State Electricity Board.

7. From perusal of one of the two files given to us by the learned Advocate General, a note of 7th May, 2001, by the Energy Minister gives a reference to some consultation undertaken by him with regard to the State Electricity Board, its constitution and the five names suggested by the Energy Minister. From the file we do not find any record of such consultation, nor any minutes with regard to any consideration process. We direct the learned Advocate General to produce before us the record of the said consultation and consideration process, either if maintained or in existence.

8. Let the matter appear on 17th July, 2001.

9. Let a copy of this order be given to the learned Advocate General.