
(2007) 05 PAT CK 0111

In the Patna High Court

Case No : M.J.C. No. 820, 1874, 1370, 511 and 1760 of 2006 and C.W.J.C. Nos. 91, 852, 858, 783, 812, 12288 of 2003, 14114, 14280, 14632, 15070, 16349, 16678 of 2004, 10180, 10221, 10262, 1069, 10719, 10727, 10800, 10846, 10898, 1090, 1093, 11117, 11207, 11295, 1130

Arjun Prasad and Others etc. etc.

APPELLANT

Vs

The State of Bihar and Others etc. etc.

RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0111

Judgement

V.N. Sinha, J.—M.J.C.No. 820 of 2006, 1874 of 2006, 1370 of 2006, 511 of 2006, 1760 of 2006 and 2667 of 2006 have been filed asserting failure on the part of the patna/Gaya Municipal Corporation and Manager Municipality that the Corporation/Municipality has failed to comply the general directions of this Court to pay the retiral dues of the petitioners and the authorities of the Corporation/Municipality are liable to be proceeded against for failure to comply the orders of this Court.

2. The aforesaid writ petitions have been filed for a direction to the authorities of the Gaya Municipal Corporation and Munger/Jamalpur Municipality to pay the admitted retiral dues to the petitioners who superannuated while serving the Corporation/Municipalities to the best of their ability.

3. During pendency of the writ petitions, petitioner of C.W.J.C.Nos. 15070 of 2004, 1595 of 2005 and 2369 of 2005 died leaving behind their heirs indicated in Interlocutory Application Nos. 3499 of 2006, 2410 of 2007 and 2404 of 2007.

4. Let the names of the petitioners of the said writ petitions be expunged and in their place the heirs/legal representatives indicated in paragraph No. 2 of Interlocutory Application Nos. 3499 of 2006, 2410 of 2007 and 2404 of 2007 be substituted and the three Interlocutory Applications bearing No. 3499 of 2006, 2410 of 2007 and 2404 of 2007 are, accordingly, disposed of.

5. Learned Counsel for the Corporation/Municipalities have not disputed the entitlement of the petitioners for being paid the retiral dues. They, however, contend that on account of paucity of fund with the Corporation/Municipalities the authorities are unable to pay the admitted retiral dues of the petitioners and no sooner funds are released by the State Government, they shall clear the entire admitted retiral dues of each of the petitioners.

6. When the aforesaid submission was made by the counsel for the different Municipal Corporation/Municipality, this Court called upon the Advocate General under orders dated 20.3.2007 to seek appropriate instructions from the State Government, whereafter the Advocate General informed this Court on 9.4.2007 that with a view to know the actual liability of each of the urban bodies, be it Municipal Corporation, Municipality or Notified Area Committee, instructions have been issued by the Urban Development Department of the State Government under Memo No. 1496 dated 5.4.2007 directing the urban bodies to fill-up the proforma which is enclosed with the letter dated 5.4.2007 whereafter the State Government shall take a view as regards the present liabilities of the urban bodies and the exercise is likely to be completed within two weeks. On 9.5.2007 learned Advocate General informed this Court that the required information in the proforma referred to in the earlier orders of this Court dated 9.4.2007 has not yet been received by the State Government as the employees of the urban bodies are on strike and the talks with the employees are in progress so that the strike may be called off. Awaiting the employees to call off the strike and the required information be furnished to the State Government, matter was again adjourned and was taken up today but as the strike has still not been called off the matter was taken up for final hearing without the advantage of the views of the State Government about the extent of the liabilities of the urban bodies. The Advocate General with reference to the show-cause of Sri P.K. Basu, the Urban Secretary filed on 8.5.2007 in M.J.C.No. 820 of 2006 alongwith the affidavit of Sri Bhuvaneshwar Ojha Deputy Secretary dated 8.2.07 submitted that the payment of retiral dues of the employees of the urban bodies is the responsibility of the urban body concerned as the employees have retired while serving the urban body and not the state Government, as after insertion of Chapter-IX and IXA in the Constitution of India there is complete democratic decentralization and devolution of powers between the State Government and local bodies and the State Government has now a very limited role in running the urban bodies. In view of the constitutional provisions, he submitted that urban local bodies have the responsibility to meet the pensionary liabilities as per the Patna Municipal Corporation Officers & Servants Pension Rules, 1986 and the Bihar Municipal Officers & Servants Pension Rules, 1987 and in this connection also referred to instructions of the State Government contained in letter No. 1268 dated 17th April, 2006, Annexurte-B. He further pointed out with reference to the resolution of the State Government dated 7.9.2004, Annexure-D that the State Government has decided to gradually curtail the assistance earlier given to the Municipalities which it had been meeting as grants-in-aid/loan over the years in

the past from 30 per cent in 2004-05, 20 per cent in 2005-06, 10 per cent in 2006-07 and Nil thereafter as the Corporation/Municipalities have to increase their own revenue for meeting the expenditure for which appropriate authorization/assignment have already been made by the legislature in the statute governing the Corporation/Municipalities and the State Government having already released Rs. 249,39685 lacs in 2004-05 and Rs. 162, 56856 lacs in 2005-06 being 30 per cent and 20 per cent of the establishment cost respectively Rs. 1133.83 lacs in 2004-05 and Rs. 5534.35 lacs in 2005-06 for development schemes in case of Patna Municipal Corporation, shall not release any further amount. After closure of the hearing of these matters, the Advocate General filed counter affidavit in M.J.C. No. 2667 of 2006, duly affirmed by the present Urban Secretary Sri Surendra Prasad Sinha reiterating the submissions already placed on record with the show-cause of the earlier Urban Secretary filed on 8.5.2007, whereunder in paragraph 5 it was once again stated that the State Government is not under any legal obligation to allocate funds to the Municipal Bodies for meeting their expenses including payment to employees. Urban Local Bodies have been constituted under statutory provision. According to the mandate of the Constitution of India, the Legislature of the State by law was required to delegate certain powers and functions including power of tax and levy of fee. In conformity with constitutional requirement State Legislature has made law and has allowed Urban Local Bodies to administer and levy tax and fees in respect of subjects envisaged in the Constitution. Apart from their own resources which is to be generated from levy of the tax and fee State Government has to allocate fund out of grants etc. received from Central Government as also resources of the State Government funds have to be allocated on the basis of the recommendation of the Finance Commission. In paragraph 6 of the said counter affidavit it has been stated that the State Government is obliged to release funds only to the extent it accepts the recommendation of the Finance Commission. It has no liability to meet all the requirements. In paragraph 7 of the said counter affidavit, it has been stated that despite State not being under any Constitutional or statutory obligation to release funds in favour of Urban Local Bodies, State Government has been generously supporting Urban Local Bodies to meet their fund requirement. According to decision taken from time to time. State Government, indeed has released funds and it is not the case of the municipal bodies that State Government has not released funds according to its decision. In paragraph 8 of the said counter affidavit it has been stated that unless the actual liability of all Urban Local Bodies is ascertained, it would not be possible for the State to consider release of fund in favour of municipal bodies. In paragraph 9 of the said counter affidavit it is submitted that while hearing the contempt matter, this Court has no jurisdiction to pass any positive direction commanding the State to release fund in favour of Urban Bodies for making payment, of salary to its employees as contempt jurisdiction cannot be enlarged for giving further direction in the matter. While considering a contempt application, this Court has Only to see whether the order alleged to have been flouted has been complied with or not and if not complied with whether non-

compliance is deliberate and wilful. In paragraph 10 of the said counter affidavit it has been stated that, finance of the State is very intricate and complex issue. Priority has to be decided by the State in accordance with what the legislature of the State has ordained. Resources of the State are not unlimited. It is known all over that State of Bihar is an under developed State in comparison to many other States. Out of its resources it has to meet all its requirement. There would be no hesitation in admitting that resources of the State are inadequate to meet most of what may be considered in public Interest. Therefore, the State has to fix its priorities. It has to meet its obligation towards construction of roads, improving health care, strengthening education sector, providing irrigation, augmenting power generation, improving Agriculture Sector and so on State Government as permitted by the Legislature, is the only authority to decide priorities of Government spending. It is not for the Courts that too sitting in contempt jurisdiction to decide the priorities of the State Government. Having made the aforesaid submission, prayer has been made to dismiss the contempt application.

7. Counsel for the Petitioners and the Corporation/Municipalities refuted the submission of learned Advocate General and submitted that the resources at the disposal of the Corporation/Municipalities is not enough to meet its liabilities unless grant-in-aid/loan is released by the State Government from time to time as was being done in the past. It was further pointed out that the development activity in the Corporation/Municipalities has come to a halt as its resources are not even enough to meet the salary/pension expenses of the serving/retired employees. In this connection, reference was made to the affidavit filed by the Municipal Commissioner, Gaya Municipal Corporation in paragraph 3 whereof it has been categorically admitted that the regular employees of the Corporation have not been paid their salary for the last 32 months.

8. In the aforesaid background it was pointed out by the counsel for the petitioners that the payment of salary/pension/retiral dues is the statutory right of a service-holder/retired employee and failure to pay salary/retiral dues/pension tantamounts to depriving the employee of his source of livelihood, dignity and means to enjoy life, health and leisure and thus infracts right to life granted under Article 21 of the Constitution of India. In this connection, it was further submitted that though right to employment cannot be claimed as a matter of right but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt as a public element and right to receive salary/pension follows no sooner appointment is made and service is rendered by the employee to the satisfaction of the employer. Reference in this connection has been made to the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . In this connection it was further submitted that in order to ensure that the instrumentality of the State, namely, the Corporation/Municipality does not violate source of livelihood of its employee infracting Article 21 of the Constitution of India, it is necessary that grant-in-aid be released in

favour of the Corporation/Municipalities. Reference in this connection was made to the provisions contained in Article 243X(c) of the Constitution of India which inter alia empowers the legislature of a State to provide for making such grants-in-aids to the Municipality from consolidated fund of the State so that the rights of its employees to livelihood is not defeated. In this connection it was further pointed out that if the Municipalities are to function as local self Government and grass-root democracy has any meaning then the Municipalities must have sufficient fund to pay its retired employees as also the serving employees failing which the activities of the Corporation/Municipalities shall only be confined on paper and the Institution of grass-root democracy shall have no meaning at all. In this connection reference was also made to the historical background of Urban Local Bodies and Panchayats and was submitted that when Indian leaders pressed for local autonomy at the national level, the British Government sought to meet this demand by offering concession at the lowest level, at the initial stage by giving powers of self Government to Panchayats in rural area and Municipalities in Urban areas under various local laws. In the Government of India Act, 1935 power to enact Legislation was specifically given to the Provincial Legislature by Entry-12 in the Provincial legislative list. By virtue of this power Act was enacted vesting powers of administration in the hands of the Panchayats. Notwithstanding such existing legislation, the framers of the Constitution of independent India were not satisfied with the work of the local bodies as Institutions of popular Government and therefore a Directive was included in the Constitution vide Article 40. But notwithstanding the Directives contained in Article-40 of the Constitution of India, the Panchayats and Urban Bodies could not function as a unit of the local self Government and with a view to enable the Panchayat and the Urban Bodies to function as an effective Unit of the local self Government, Parts-IX and IXA were inserted in the Constitution of India providing for the Panchayats and the Municipal Bodies, whereunder a three tier system was ordained so that there may be effective grass root democracy in the country. In order to make Panchayats and the Urban Bodies financially self sufficient, provisions were made in Articles 243H and 243X enabling Legislature of the State to authorize/assign a Panchayat/Urban Body to levy and collect such taxes, duties, tolls and fees and if those taxes were not sufficient to meet its expenditure then further provision was made for making such grants-in-aid to the Panchayats/Urban Bodies from the consolidated fund of the State. It was further pointed out that a close reading of Articles 243H and 243X does not indicate that the grants-in-aid to the Panchayats/Urban Local Bodies from the consolidated fund of the State should be subject to the recommendations of the Finance Commission as the grant-in-aid is to be made to meet the exigency/urgency of the situation arising from time to time but constitution of the Finance Commission to review the financial position of the Panchayat/Urban Body is to be made every five years. In between there may be such exigency which may require release of funds much beyond the recommendations of the Finance Commission and appreciating such exigency the State Executive may itself release such grants-in-aid from the consolidated fund of the State so that

Panchayats/Urban Bodies are not starved of the funds as with reference to Article 162 of the Constitution of India it was submitted that the executive powers of the State Executive is co-extensive with that of the State Legislature. In view of the submissions noted above, prayer was made that State Government be directed to release funds which is necessary for the Urban Bodies to make payment of retiral dues of its employees. In this connection, reference was also made to the order dated 12.10.2004 passed in M.J.C.No. 385 of 2003 in compliance whereof the State Government released funds for payment of the dues of the Corporation employees.

9. Having heard counsel for the parties and having appreciated the submission aforesaid made in respect of the provisions contained in Chapter-IX and IXA of the Constitution of India, especially the provisions contained in Article 243, 243H(c) and 243X (c) of the Constitution of India, I am of the view that in order to ensure that the retired employees of the Corporation/Municipalities are not allowed to starve in the evening of their lives, it is necessary for the State to release such fund, which is necessary for payment of the retiral dues including pension on regular basis as entitlement of the petitioners for receipt of the retiral dues and the pensionary benefits on month-to-month basis have not been disputed in any one of these petitions. The only ground taken in the counter affidavit being the paucity of fund, I direct the State Government to take appropriate steps so as to ensure that the retired employees of the Corporation/Municipalities are not starved on account of paucity of fund and are paid their retiral dues and admissible pension on regular basis, provided they are otherwise entitled for the same. Necessary steps in this regard must be taken by the State Government within two months from the date of receipt/production of a copy of this order. While taking steps in this regard, the State Government shall remind itself that the liability to make payment of pension to the employees of the Urban Bodies has been created by the State Government when it enacted Patna Municipal Corporation Officers and Servants Pension Rules, 1986 and Bihar Municipal Officers and Servants Pension Rules, 1987 which became effective with effect from 1st January, 1986 and 1st April, 1986 respectively and in view of the provisions of the Patna Municipal Corporation Act, 1951 and Bihar and Orissa Municipal Act, 1922, the Urban Bodies had no option but to allow the employees to subscribe to the Pension Rules. If any of the employees are not entitled for retiral dues then the Municipal Commissioner and Chief Executive Officer concerned should pass specific speaking order giving reasons as to why a particular retired employee is not entitled for the reliefs prayed for in these writ/contempt petitions. Such order should also be passed within 30 days from the date of receipt/production of a copy of this order which the aggrieved petitioner shall be at liberty to challenge.

10. The M.J.C. applications as also the writ petitions are accordingly, disposed of with aforesaid directions.