
(1994) 05 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 6391 of 1992

Bihar State Construction Corporation Ltd., Kamgar Union	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 11-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) 42 BLJR 1109 : (1995) 70 FLR 443 : (1995) 1 LLJ 860 :
(1994) 2 PLJR 346

Hon'ble Judges : K.S. Paripoornan, C.J.; A.K. Ganguly, J

Bench : Division Bench

Advocate : Ved Praksah, for the Appellant; Rameshwar Prasad, A.G. and Jagannath Jha, G.P. II and Ganga Prasad Roy, for the Respondent

Judgement

A.K. Ganguly, J.—This writ petition has been filed by the Bihar State Construction Corporation Kamgar Union, inter alia, praying for a direction upon the respondent authorities to pay the dues in regard to the salary of members of petitioner Union, the employees of Bihar State Construction Corporation Limited (hereinafter referred to as the said Corporation).

2. The case, as sought to be made out in this writ petition, is that the Government of Bihar by an order dated February 2, 1974 decided to form the said Corporation under the Water Resources Development Department. The said Corporation was established with the avowed object of liquidating monopoly of the contractor in respect of developmental work in Bihar.

3. Far from achieving its objectives, the affairs of the said Corporation were so badly managed that it came under a severe financial crunch to such an extent that its 1600 employees could not be paid their salary from the month of June 1991. The writ petition was, therefore, filed in the month of July, 1992 for obtaining a mandate upon the State Government for allotment of funds to the said Corporation for payment of salary to its Class III and Class IV employees.

4. In the writ petition several instances have been given to show that various sums of money to the Corporation are lying due from the various departments of the Government of Bihar.

5. The matter has been kept pending at the admission stage since August 19, 1992. During the pendency of the writ petition a large number of orders had been passed from time to time. In one such orders dated September 30, 1992 it was recorded by a Division Bench of this Court that the Corporation admittedly owes an amount of Rs. 1,35,47,000.00 to the employees on account of arrears of salary and other service benefits. The same Division Bench of this Court also in various orders have come to a tentative finding that there is no legal right of the petitioners to make a prayer for a direction upon the Government to release its money for payment of salary to the employees of the Corporation but the Court felt that there is a moral obligation of the Government to see that the employees of the Corporation set up by it are paid their salary.

6. In order to ascertain whether any amount is payable by the State Government to the said Corporation, the Court by an order dated July 15, 1993 appointed one Mr. V.S. Dubey, Commissioner- cum-Secretary, Water Resources Development Department of the State Government, as a Special Officer in the case in order to find out what amount, in fact, is due and payable to the Corporation by the State Government.

7. Thereafter the said Mr. Dubey filed his report and a Division Bench of this Court on a perusal of the said report by its order dated January 11, 1994 came to the conclusion that the State Government is entitled to claim a sum of Rs. 178.82 lakhs from the Corporation. Therefore, the State Government does not owe any amount to the said Corporation. By that time, namely, January 1994, the arrears of salary of the employees further swelled and came to about Rs. 3 Crores. As such the court felt helpless to do anything in the matter and by an order dated January 11, 1994 it highlighted the moral obligation of the State Government for payment of salaries of the employees of the said Corporations set up by the State. The Court directed the matter to again appear on January 14, 1994 for final disposal.

8. On January 14, 1994 instead of disposing of the matter, the Court merely recorded the statement of the learned Advocate- General to the effect that he has taken up the matter with the highest authorities of the State and as such the Court decided to take up the matter on January 20, 1994 and requested the learned Advocate General to look into the matter and see whether any relief can be given to the person on legal or moral ground. Thereafter the matter has been heard on April 11, 1994 by us. No step was suggested before us by the learned Advocate General about payment of salary to the workers of the said Corporation.

9. The question involved in this case is whether before a writ Court, the employees of the said Corporation seek a mandate upon the State of Bihar for release of fund to the said Corporation for payment of their salaries. On this

point, law has been settled by the Supreme Court to the effect that an order directing payment of money cannot be passed by a Writ Court. The said function is virtually the function of a Civil Court and it is well-established by a catena of cases that the Writ Court cannot usurp the function of a civil court. Non-payment of salary amounts to a breach of the contractual terms of service between the employees and the said Corporation. In a Constitution Bench judgment of the Supreme Court in the case of the *Burmah Construction Company v. The State of Orissa*, reported in AIR 1962 SC page 1320, the Supreme Court held at page 1323 that "High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a Civil liability arising out of a breach of contract..... to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit." The said decision further clarifies that to enforce a statutory liability against the State or its officers, order for payment of money can be made. The said judgment of the Supreme Court still holds the field.

10. In order to ensure payment of salary of the workers, various social welfare legislations have been enacted, namely, Payment of Wages Act, Industrial Disputes Act etc. But the aggrieved workers instead of pursuing those statutory remedies have been rather ill-advised to rush to this Court.

11. In spite of having all the sympathies for the workers who have not been paid their salaries, this Court cannot persuade itself to hold that a writ petition in the present case is maintainable. This Court feels the question, whether or not the State Government is under a moral obligation to pay salaries to the employees of the said Corporation, falls outside the domain of this Court and the Court will not, as obviously it cannot, venture to decide that question even if it may feel tempted to do so. That is the discipline of law which every court must abide by and adhere to. Therefore, this Court does not indulge in the judicial acrobatics of enforcing a moral obligation by issuing a writ of and/ or in the nature of mandamus.

12. For the reasons aforesaid, this Court does not propose to pass any order on this writ petition. But, nevertheless, this Court makes it clear that this order will not, in any way, prejudice the rights of the parties to initiate or take any proceedings available to them under the law. It is also made clear that anything said in this judgment will not be construed by an authority as any expression of opinion about the merits of the claim of the rival parties in any future proceedings, if any, initiated under the law.

13. With these observations, this writ petition is disposed of. There will be no order as to cost.

K.S. Paripoornan, C.J.

14. I agree.