

(2008) 09 PAT CK 0160
In the Patna High Court
Case No : LPA No. 240 of 2000

Bihar State Electricity Board and Others APPELLANT
Vs
Dinesh Kumar Singh and Others RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26, 4, 4(2)
Electricity (Supply) Act, 1948 — Section 10, 12, 12A, 15, 5
Mines Act, 1952 — Section 2

Citation : (2008) 09 PAT CK 0160

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Shivajee Pandey and Vinay Kirti Singh, for the Appellant; Basant Kumar Choudhary and Rajesh Prasad Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Prasad and Ranjan, JJ.—L.P.A. No. 240 of 2000, L.P.A. No. 241 of 2000 and L.P.A. No. 322 of 2000 arise out of the common order dated 13.12.1999 passed in C.W.J.C. No. 11410 of 1998, C.W.J.C. No. 179 of 1999 and C.W.J.C. No. 11411 of 1998. L.P.A. No. 479 of 2000 arises out of order dated 18.2.2000 passed in C.W.J.C. No. 181 of 1999. While dismissing C.W.J.C. No. 181 of 1999, the learned Single Judge has relied on an earlier order of this court dated 13.12.1999 passed in C.W.J.C. No. 11410 of 1998 and analogous cases. All the appeals involve common question of law and, as such, they were heard together and are being disposed of by this common judgment.

2. All the writ applications have been dismissed and the writ petitioners-appellants aggrieved by the same have preferred these appeals under Clause 10 of the Letters Patent.

3. Facts lie in a narrow compass. Workmen-respondent No. 1 herein were employees of the Bihar State Electricity Board (hereinafter referred to as the "Board") and aggrieved by their removal they filed separate complaints before

the competent authority u/s 26 of the Bihar Shops and Establishment Act (hereinafter referred to as the "Act"). The competent authority on fact found that the workmen were employed for a period of more than six months and the order of removal has been passed without giving them a month's notice in writing or a month's wage in lieu thereof. Accordingly it came to the conclusion that their removal from service is in violation of the mandatory provision of Section 26 of the Act. Accordingly, the competent authority directed the Board to restore the workmen to their previous status which they were enjoying prior to termination with full back wages.

4. Aggrieved by the same, the Board has preferred writ applications and challenged the order of the competent authority.

5. It was contended before the learned Single Judge that the Board is covered by Entry 3 in Schedule of the Act issued under the proviso to Section 4(2) of the Act, none of the provisions of the Act would apply and hence the complaint filed by the workmen ought to have been dismissed on that ground alone. This contention of the Board has been rejected by impugned order. Other ground urged by the Board before the learned Single Judge was that instead of directing for reinstatement of the services of the workmen, the learned Single Judge ought to have granted compensation. This also did not find favour with the learned Single Judge.

6. Mr. Shivajee Pandey, Senior Advocate, appearing on behalf of the appellants submits that the Board may not be an office of the State Government but surely an office under the State Government and Entry 3 of Schedule 1 of the Act read with Section 4 of the Act makes the provisions of the Act inapplicable in the case of Board.

7. Mr. Basant Kumar Choudhary, Senior Advocate, appearing on behalf of workmen-respondent No. 1, however, contends that the Board cannot be said to be an office under the State Government and hence the entry aforesaid shall not govern the field.

8. Rival submission necessitates examination of Section 4 of the Act and Entry 3 of the Schedule, which read as follows:--

3. Exceptions.-- (1) The provisions of this Act shall not apply to any precinct or premises of a mine as defined in clause (i) of Section 2 of the Mines Act, 1952 (XXV of 1952).

(2) Notwithstanding anything contained in this Act, the provisions thereof specified in the third column of the Schedule shall not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column:

Provided that the State Government may, by notification, add to, omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in either column of the

Schedule shall be deemed to be amended accordingly.

SCHEDULE

Sl. No.

Establishments, employees or other persons

Provisions of the Act

1.

XX

XX

2.

XX

XX

3.

Offices of or under the Central or State Government or of a Municipal Committee or District Board or any other Authority entitled to the control or management of a municipal or local fund.

All provisions

9. From a plain reading of the aforesaid provision, it is evident that in case an office is under the State Government, none of the provisions of the Act shall apply. In view of the decisions of the Supreme Court in the case of C.V. Raman Vs. Management of Bank of India and Another, , there is no escape from the conclusion that if on an office/establishment there is deep and pervasive control of the State Government, it may not be the office of the State Government but surely an office under the State Government.

10. In view of aforesaid, we are obliged to see as to whether the State Government has any control over the Board so as to make it an office under the State Government. To ascertain that it shall be expedient to refer to the provisions of the Electricity (Supply) Act, 1948. Section 5 of the Electricity (Supply) Act, 1948 confers power on the State Government for constitution and composition of Electricity Board and Section 10 thereof confers power on the State Government to suspend or remove its members. Section 12 of the Electricity (Supply) Act makes the Board a body corporate having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, which can sue and be sued in the said name. Section 12A of the Electricity (Supply) Act gives discretion to the State Government to specify from a particular date that the Board shall be a body corporate with such capital, not exceeding ten crores of rupees, as the State Government may specify from time to time and with the approval of the State Legislature increase

the maximum limit of such capital. The power to appoint Officers and employees vests with the Board u/s 15 of the Electricity (Supply) Act excepting the Secretary, whose appointment is subject to the approval of the State Government. Section 61 of the Electricity (Supply) Act obliges the Board to furnish to the State Government a statement in the prescribed form of the estimated capital and revenue receipts and expenditure for the ensuing year. The State Government is obliged to lay the statement in the State Legislature and though statement shall be open to discussion but not subject to vote. There is restriction on expenditure of the Board u/s 62 of the Electricity (Supply) Act in respect of expenditure not incorporated in the annual financial statement. Section 78 of the Electricity (Supply) Act confers power on the State Government to make rules, whereas Section 78A of the Electricity (Supply) Act confers authority on the State Government to issue directions on questions of policy. The Board in turn is to be guided by such policy directions.

11. From the provisions referred to above, we are of the opinion that the State Government has no deep or pervasive control over the Board. In our opinion, the power to constitute the Board itself shall not make it a department under the State Government. As stated earlier, the Board has power to appoint Officers and staff excepting the Secretary, who has to be appointed subject to the approval of the State Government. Thus there is total independence to the Board in appointment of Officers and staff excepting the Secretary.

12. Even in respect of financial control we do not find that there is any control of the State Government. The Board has to conduct its finance under the provisions of the Electricity (Supply) Act but that shall not mean that the State Government has control over it. None of the provisions under the Electricity (Supply) Act, 1948 gives any power to the State Government to exercise day-to-day control on the functioning of the Board.

13. In the face of it, it cannot be said that the Board is an office under the State Government. Once it is held so, the, complaints made by the workmen under the provisions of the Act were fit to be entertained by the competent authority. We are of the opinion that the competent authority under the Act did not err in entertaining the applications.

14. Mr. Pandey, then submits that in case of termination of service, the competent authority under the Act is not obliged to direct reinstatement of service, instead it ought to have passed order for grant of compensation.

15. We do not find any substance in the submission of Mr. Pandey also. As a proposition of law, it cannot be said that the competent authority under the Act had no jurisdiction to direct reinstatement in service. The competent authority being possessed with that jurisdiction and having exercised the same, its order cannot be said to be illegal. The learned Single Judge had not interfered with the exercise of discretion by the competent authority.

16. We are of the opinion that this is not a fit case in which discretion exercised

by the competent authority, as affirmed by the learned Single Judge call for our interference in this appeal. In the result, we do not find any merit in these appeals and they are dismissed accordingly, "but without any order as to costs.