
(2003) 12 PAT CK 0058
In the Patna High Court
Case No : C.W.J.C. No. 1311 of 2003

Bihar Vyavsayik Sangharsh Morcha and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Citation : (2004) 1 PLJR 694

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : M.K. Gupta, for the Appellant; S.K. Ghose, for State and S.N. Jha and Ashim Jha, in I.A. No. 5693/03, for the Respondent

Judgement

1. There is a packed Court room today which seems to be bursting at the seams the like of which is not seen normally. The issue and the subject is law and order in Bihar. Whereas counsel for the Petitioner has hardly been able to submit there seems to be tangent views cutting across perhaps from those who may be affected with a law and order situation which affects their lives, attempting to tell the Court that time has come for those who are to maintain law and order to set their house in order and take their obligations in service for which they were recruited. Every one's time comes to go like the sunset, a transfer and posting is no different. Between the right claimed to resist a transfer and it does not matter whether a constable or an officer, transfers and postings are the normalcy of service and in normal times as far as possible it must be done by the book. No one will dispute this.

2. If any one can certify that Bihar is with peace, law and order and it is "peace in our times" then the suggestion of the Court is that all these persons who see an illusory calm and tranquility, to take out the Hindi newspapers published locally of any given month and, like the sub-editor at a newspaper's desk, take out all the reported cases of violence and make a file of it. What will stare anybody in the face is an onslaught of the reality of the situation. Blood, more blood and blood. Rape Pillage.

3. Before the Court there is an attempt being made on how to stall the proceedings. Obviously, these are the transfer resisters. All that the Court is concerned about is restoration of public peace and tranquility. Such of those persons who may have remained in their postings, to put it modestly, a little more than is necessary the administration should consider whether their time has come to take a transfer.

4. The answerability of the administration is not to the Court, but to the people. The Court is not running the administration. Transfer by the book is for normal times, not turmoil.

5. If any Officer, and it does not matter who he may be, claims his right and rank to resist transfer he has to face the people. A transfer should not be malicious and on caprice. But public service is not all about rights, and a vested right not to be transferred. There is an obligation to the citizen and the civic community by the State to guarantee law and order and peace and calm. The police is only an agency which has been cast with the responsibility to ensure this.

6. The Court can only remind those who claim their rights over an obligation to the people and the State, to a letter which Mahatma Gandhi wrote to Dr. Julian Huxley. Dr. Julian Huxley was seeking views from World leaders when the Human Rights Commission of the United Nation was engaged in the preparation of the Universal Declaration of Human Rights. The text:

A letter addressed to the Director-General of Unesco by Mahatma Gandhi Bhangi Colony New Delhi

May 25th, 1947

Dear Dr. Julian Huxley

As I am constantly on the move, I never get my post in time. But for your letter to Pandit Nehru in which you referred to your letter to me, I might have missed your letter. But I see that you have given your addressees ample time to enable them to give their replies. I am writing this in a moving train. It will be typed tomorrow when I reach Delhi.

I am afraid I can't give you anything approaching your minimum. That I have no time for the effort is true enough. But what is truer is that I am a poor reader of literature past or present much as I should like to read some of its gems. Living a stormy life since my early youth, I had no leisure to do the necessary reading.

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Yours sincerely M.K. Gandhi

7. This is not a case which will be decided on counter affidavits and rejoinder affidavits on claims and counter claims. No one claims that there is peace all around. Even the Additional Advocate General or the Chief Secretary, Bihar do not assert such a claim. The Director General of Police is not available to make a claim or deny it. A number of police officers present do not assert that all is well on law and order and within their control.

8. A police officer's right not to be transferred after an unusually long stay is one place is a misplaced right in turbulent, turmoil-like violent times. The book of transfers is good for normal times. Bihar is facing day to day violence and bloodshed all over. It is not an isolated human rights case. It is syndrome of human rights violations.

9. At the request of A.A.G. 2. put up on 12 January, 2004 in the supplementary list.