
(1997) 04 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 348 of 1997

Brij Raj Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Bihar Prevention of Specified Corrupt Practices Act, 1983 — Section 32

Citation : (1997) 2 PLJR 710

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Ram Balak Mahto and Shivendra Kishore, for the Appellant; F.A. Khan, A.K. Mallick and Yogesh Chandra Verma and Uma Kant Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioner seeks quashing of the Notification No. 12790 contained in memo No. 12804 dated December 31, 1996 of the Rural Development Department. By the said notification Respondent No. 3 Raj Nandan Choudhary has been posted as Block Development Officer (BDO), Asthawan (District Nalanda) on transfer from Sonapur (District Saran), and the posting of the Petitioner as BDO, Asthawan made earlier by notification No. 12369 dated December 19, 1996 has been cancelled. Both the Petitioner and Respondent No. 3 are members of the Bihar Administrative Service. On deputation they are in the Rural Development Department.

2. The validity of the impugned order of transfer/posting has been questioned on the ground that the Petitioner having joined Asthawan pursuant to the notification dated December 19, 1996, his posting could not be cancelled, much less at the instance of an MLA. It is said that the transfer/posting of officers within such a short span without any reason should be struck down as being against public interest as also in the interest of the service. Copy of the letter of the MLA which is said to be the basis of issuance of the impugned notification has

been brought on record as annexure 7 to the writ petition.

3. The grievance of the Petitioner was noted on February 11, 1997 when notice was issued to Respondent No. 3 and the operation of the impugned notification was stayed till further orders. When the case was taken up after service of notice on the Respondent on April 22, 1997, in the facts and circumstances of the case the State Counsel was directed to produce the entire records pertaining to the transfer/posting of BDOs in different Blocks of the State by various notifications as contained in memo No. 12374 dated December 19, 1996 and memo No. 12874 dated December 31, 1996. It may be stated here that according to the Petitioner, out of 255 persons transferred by various notifications on December 19, 1996, 54 of them were disturbed, that is to say, again transferred on December 31, 1996, that is within 12 days, for extraneous consideration, at the instance of local MLAs. As a matter of fact, according to the counsel, most of those transfer/posting had been made at the instance of the Legislators.

4. When these submissions to the above effect were made it looked as if the counsel was overstating his case. Having gone through the original files, it rather seems that what was stated on behalf of the Petitioner was only the proverbial "tip of the iceberg". It appears that almost all the aforesaid transfers/posting have been made on the basis of the so-called recommendation of the local Legislators. At one stage I was inclined to mention the names of the Legislators. But I later realised that if I were to mention the names of all such MLAs/MLCs, this order would virtually become a directory of names. In fact, the three folder files consisting of 755 sheets mostly contain the letters of the legislators, some of whom have made recommendation more than once and addressed them to the Chief Minister, Minister-in-charge and so on. It was distressing to find that in many of such letters, the concerned MLA/MLC had openly stated that so and so belongs to a particular caste and, therefore, he may be posted at a particular place. As a matter of fact, in Annexure 7 itself as regards Respondent No. 3 it has been stated that he belongs to "social justice" category while the Petitioner does not belong to that category and, therefore, he (Respondent No. 3) should be posted.

5. The question as to whether the Members of the Legislative Assembly/Council can interfere with the transfers/posting of officers has come up for consideration before this Court on various occasions. There are at least three reported cases which I propose to refer in this order. In *Ramakant Choudhary v. State of Bihar* 1975 (2) SLR 67, having considered the matter in details this Court observed.

If I were to allow the order passed by the Administrator to stand, what would it ultimately mean? It would mean that a Member of the Legislative Assembly can dictate to an Administrative Officer the course he has to adopt in discharge of his duties. It would mean that such an order though passed for extraneous reasons as a result of undue influence, is allowed to stand. As stated earlier, the basic principle of good administration is that even administrative actions must be just and fair. If the order is allowed to stand it would amount to allowing an unjust,

unfair and an ultra vires order to continue to have effect. It is true that the Administrator was the sole judge of exigencies of public service and connected matters for the purpose of making an order of transfer. It is, however, equally true that he was bound to take into consideration relevant matters and decide for himself. The basic principle of our democracy is the rule of law. A duty has been cast upon this Court in this behalf. This Court cannot, therefore, refuse to set aside an order such as the present one.

Earlier in *Shyam Sundar Sen Vs. The State of Bihar and Others*, , a Division Bench of this Court had stated.

In the set up of the democratic Government run under our Constitution powers of the three limbs of the State, namely, legislative, executive and judiciary, are in separate compartments. Undoubtedly, the power of the judicial limb is different and distinct from the power of the executive and legislative limbs of the State. Since, however, our democracy is being run on the Parliamentary system of Government, the Ministers for their executive actions are jointly responsible to the legislature. That way the Members of the Legislative Assembly and the Legislative Council come to have their say in the matter of administration. A question does arise as to whether it is legitimate and proper for the members of the Legislature to interfere with the day-to-day administration of the Government as the two members purported to inter-meddle by their letter dated the 14th of October, 1971.

Again, in *Abdul Muttalib v. State of Bihar* 1985 PLJR 931 Anr. Division Bench of this Court observed,

The representative of people can certainly bring to the notice of the authorities concerned the inaction or improper action of an officer in his locality but then the State Government has to apply its independent mind whether it will be in the interest of the administration of the State that such an officer should be transferred irrespective of the period for which he had stayed at such a place... I can appreciate that a representative of the people can complain about an officer who has been posted in his locality, but can he even suggest the name of the officer who should be posted in his locality? In my view, the answer is in negative.

In view of the afore-quoted judgments of this Court it is clear that while an MLA/MLC being people's representative can bring to the notice of the Government any act of omission or commission of Government servant posted within his constituency, he cannot ask the Government to post a particular officer of his choice, and if the Government accedes to such request without independent application of mind, it would not only amount to abdication of executive power but also interference with the functioning of the Government and the order of transfer/posting would be liable to be struck down as being based on extraneous consideration.

6. The Secretary, Rural Development Department has virtually admitted the fact that the transfers/posting have been made, and those made earlier have been

altered, at the instance of the MLAs. The relevant part of the supplementary counter affidavit runs as follows:

It will be worth-while to mention that after issuance of the notification dated 19.12.96 transferring/posting a number of officers of the Bihar Administrative Service and Bihar Agriculture Service as BDOs in different Blocks, several representations were submitted by a number of MLAs and Ors. to the Minister-in-charge, Rural Development Department who ordered for considering the whole, matter Anr. meeting of the Departmental Establishment Committee should be convened. In compliance with the order of the Minister-in-charge, the Department Establishment Committee met on 28.12.96 and made its recommendation for approval of the Government and upon orders of the Government, notification dated 31.12.96 was issued making several modifications in the earlier notification dated 19.12.96.

The fact the such modifications have been made at the instance of the MLAs has however been defended on the ground that the BDOs are responsible for development work in their respective Block and, therefore, it is natural that they are generally under constant watch of the members of the public as well as their elected representative.

7. I wanted to know from the Secretary, Rural Development Department, who was personally present in Court during hearing of this case, as to how the particular MLA (Shri Satish Kumar) could vouchsafe the conduct of either the Petitioner or Respondent No. 3. As indicated at the outset, while Respondent No. 3 was earlier posted at Sonepur, the Petitioner was posted at Saraiya in different districts. The local MLA therefore was not expected to watch the performance of either of the two officers and opt for the transfer of the Respondent in place of the Petitioner. The Secretary had absolutely no answer to the query made by the Court. He submitted that as per the previous recommendation of the Establishment Committee it was Respondent No. 3 who was proposed to be posted at Asthawan but the Petitioner managed his posting on 19.12.96. Mr. Faruque Ahmad Khan, learned Government Advocate, on his part, submitted, that Annexure 7 was written at the instance of the Petitioner himself and not the Respondent. Such a stand, farfetched as it is, has to be rejected summarily.

8. From the statements made in the supplementary counter affidavit it is virtually an admitted position that the impugned notification has been issued at the instance of the MLA. In fact, as noticed above, most of the notifications have been issued in the like manner. It may well be that the Petitioner earlier managed his posting at Asthawan by utilising his political contact. And if that be true, this Court would be unwittingly helping him in continuing at Asthawan, if the impugned notification is quashed. Therefore, although I am satisfied that the notification has been issued for extraneous consideration, in view of the law laid down by this Court in the aforementioned cases, in my opinion, the matter needs reconsideration by the Department. The department, in fact, should consider whether it would not be advisable to give a fresh look and review the impugned

transfers/posting as a whole. So far as the present case is concerned, I have no hesitation in quashing the same and issuing a direction to the Establishment Committee to consider the matter again and issue fresh notification. It would be in the fitness of things if neither the Petitioner nor Respondent No. 3 is posted at Asthawan. It is expected that the Establishment Committee will take an objective decision without being influenced by any extraneous consideration.

9. Before I part with this order I would like to remind the Respondents that in terms of the provision of Section 32 of the Bihar Prevention of Specified Corrupt Practices Act, 1983 (Bihar Act I of 1989), whoever being in the service of the State or a Public Undertaking secures or attempts to secure his transfer or cancellation of a transfer or posting otherwise than by representing or approaching through normal official or prescribed channels, may be punished with imprisonment of either description for a term which may extend to six months or with fine or with both. I wonder if the aforesaid provision has even been applied in this State. If the authorities start criminal prosecution against unscrupulous officers and employees who resort to political pairvi for their transfer or cancellation of transfer etc. for extraneous consideration, the situation which is becoming bad to worse, could certainly improve, if only the State Government had the will-power-to do so.

10. This writ petition, in the facts and circumstances of the case, is allowed. The impugned notification No. 12790 contained in memo No. 12804 dated December 31, 1996 is quashed. The Respondent-State is directed to reconsider the matter and issue fresh notification at the earliest, preferably within a period of three weeks in accordance with law.