

(1992) 04 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 119 of 1992 (R)

Citizens Cause and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0024

Judgement

S.B. Sinha, J.—In this application, the petitioner has inter alia prayed for a declaration that Bihar Intermediate Education Council Ordinance, 1991 (Bihar Ordinance 6 of 1991) is unconstitutional and void.

2. Petitioner No. 1 is an Association of social activists. Petitioner No. 2 is a practicing advocate and father of a student who had allegedly suffered at the hands of respondent No. 3.

3. According to the petitioner, the Bihar State Intermediate Education Council Ordinance was first promulgated in the year 1982. Despite expiry of the said Ordinance, similar Ordinances were promulgated, from time to time successively and the last Ordinance in the series is the aforementioned Ordinance No. 6 of 1991.

4. The vires of Bihar Intermediate Education Council Ordinance, 1985, along with various other Ordinances was questioned before the Hon''ble Supreme Court of India by one Dr. D. C. Wadhwa and the Supreme Court in Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, struck down the said Ordinance as unconstitutional and void.

5. According to the petitioner despite the said fact the aforementioned Ordinance had been repromulgatedi methodologically and deliberately by the concerned respondents which is a fraud on the Constitution.

6. Paragraphs 12 to 14 of the writ application used as follows:

That earlier the Intermediate Education was being controlled by as many as six

Universities. Gradually the number of students have tremendously increased, but only for political and selfish gains at the cost of the students and guardians, a political decision was taken to form an Intermediate Education Council for whole of the State of Bihar. Thus, the load and responsibilities which was being carried out by six Universities have been loaded on a newly born baby i.e. respondent No. 3. From 1982 till 1983, the respondent No. 3 was running only to the benefits of some persons who were adorning its posts at the costs of the citizens. For the first time respondent No. 3 under took the task of conducting examinations of Intermediate Education in 1989 and the results have been disastrous to the great detriment and irreparable loss to the students. As a matter of fact, respondent No. 3 have completely failed to carry out the provisions of the Intermediate Education Council Ordinance and the purposes for which it was formed as enumerated u/s 15 of the Ordinance of 1991. Besides, even after lapse of ten years, the provisions of Chapter V, specially provisions of Sections 35, 36 and 37 are yet to be followed. Respondent No. 3 has also failed to effectively implement and make viable alternative and arrangements as provided in Chapters 6 and 7 of the 1991 Ordinances.

That the Bihar Intermediate Education Council has insufficient staff, ill-equipped office, inefficient and inexperienced persons in the office and it has become a house of extortion and harassment to the students. It is relevant to state that respondent No. 3 has no branch or regional officer as a result for even minor work, everyone has to run to Patna and it is difficult to do even genuine work in the office of the respondent No. 3 without grossing the palms of the concerned employees. The Council is in a mess and in complete shambles.

That on the one hand, the State Government is increasing the number of Universities for the facility of the persons residing in the area and on the other hand the load of six Universities has been loaded on respondent No. 3. Thus, the load of six vehicles have been loaded on one vehicle. The result is naturally disastrous. The action on the part of the respondents is completely arbitrary and violative of Article 14 of the Constitution of India.

7. In this case, the hearing of this application commenced on 31-3-1992 and on 1-4-1992 a counter-affidavit was filed on behalf of respondent No. 1. In the said counter-affidavit, it has been contended that respondent and the Secretary Human Resources Development Department who are controlling the functions of the Bihar Intermediate Education Council (in short to be stated as the said Council) are the contesting respondents but despite requests made to the Secretary Education by letter dated 23-1-1992, no details has been furnished. In the said counter-affidavit, it has been contended that so far as Law Department is concerned, it is merely required to draft the bill as per instructions and advise the concerned ministry. It has been accepted that 1985 Ordinance had been struck down by the Supreme Court. However, it was stated that a bill was introduced in the year 1985, but owing to shortage of time the same could not be considered and ultimately was withdrawn in July, 1987.

8. It has further been contended that during pendency of the bill, for working of the Council, Ordinances had been promulgated from time to time incorporating the provisions of the bill. It has further been stated that Bihar Intermediate Education Council Bill, 1987 was sent to the Assembly on 7-7-1987, but the Assembly adjourned sine die before expiry of it. The Bill was therefore introduced in the year 1988 and it was referred to a Select Committee on 21-8-1988 but the Select Committee did not submit its report. It has been asserted that in March, 1990 the bill was again introduced and referred to the Select Committee and upto now the Select Committee has not submitted its report.

9. From what has been noticed hereinbefore, there cannot be any doubt that no serious attempt had been made by the State to get the bills passed at the Assembly. It is admitted that the Supreme Court struck down the Ordinance of 1985. In that view of the matter the State was under an obligation to make all serious efforts to enact a legislation incorporating the Bihar State Intermediate Education Council. Even the Select Committee had not performed its duties. The main function of the Legislature is to legislate and it is really unfortunate that a Bill which was introduced in the year 1985 could not be enacted despite its introduction in the Assembly on three occasions.

10. It is, thus, clear that on serious effort has been made by the State whatsoever. In Dr. Wadhwa's case (supra), the Supreme Court noticed that so far Bihar Intermediate Education Council Third Ordinance is concerned, a legislative proposal was in fact introduced for enacting its provisions into an Act. Despite the same, as noticed hereinbefore, the Supreme Court struck down the aforementioned Ordinance. The Supreme Court observed:

The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations. Petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice. We must, therefore, reject the preliminary contention raised on behalf of the respondents challenging the locus of the petitioners to maintain these writ petitions.

In paragraph 6 of the judgment the Supreme Court noticed that it is a settled practice to go on re-promulgating an Ordinance from time to time and the same was done methodologically and with a sense of deliberateness,

11. Upon taking into consideration various Circulars issued by the State of Bihar, it was noticed by the Supreme Court that re-promulgation of the Ordinances was done on a massive scale in a routine manner without even caring to get the Ordinances replaced by Acts of the Legislature or considering whether the

circumstances existed which rendered it necessary for the Governor to take immediate action by way of repromulgation of the Ordinances.

The Supreme Court thereafter considered the question as to whether the practice followed by the State of Bihar can be justified as representing legislative exercise of power of promulgating Ordinances conferred on the Governor under Article 213 of the Constitution of India and held:

The only question is whether the Governor has power to repromulgate the same Ordinance successively without bringing it before the Legislature. That clearly the Governor cannot do. He cannot assume legislative function in excess of the strictly defined limits set out in the Constitution because otherwise he would be usurping a function which does not belong to him. It is significant to note that so far as the President of India is concerned, though he has the same power of issuing an Ordinance under Article 123 as the Governor has under Article 213, there is not a single instance in which the President has since 1950 till today repromulgated any Ordinance after its expiry. The starting facts which we have narrated above clearly show that the Executive in Bihar has almost taken over the role of the Legislature in making laws, not for a limited period, but for years together in disregard of the constitutional limitations. This is clearly contrary to the constitutional scheme and it must be held to be improper and invalid. We hope and trust that such practice shall not be continued in the future and that whenever an Ordinance is made and the Government wishes to continue the provisions of the Ordinance in force after the assembling of the Legislature", a Bill will be brought before the Legislature for enacting those provisions into an Act, There must not be Ordinance Raj in the country.

12. In the instant case, in our opinion, as the conduct of the State in repromulgating the same Ordinance successively despite the fact that the 1983 Ordinance had been struck down by the Supreme Court borders on contempt of the Supreme Court of India. The conduct of the State of Bihar must be deprecated. Apparently the State of Bihar has belied the hopes of the Supreme Court as expressed in Wadhwa's case.

13. It is clear that Ordinance Raj is still prevailing in the State of Bihar. The conduct of the State in pursuing this case is also reprehensible.

The State did not file its counter affidavit within the period prescribed under the Patna High Court Rules.

As noticed hereinbefore, a counter affidavit was filed during hearing of the writ petition. Even in the said counter affidavit, the statements made in the writ petition were not traversed. The council has not filed any counter affidavit at all. Thus the startling facts stated in paragraphs 12-14 of the writ petition remain unchallenged which clearly depicts a sordid state of affairs so far as the functioning of the council is concerned.

14. In this view of the matter, we have no other option but to strike down Bihar

Intermediate Education Council Ordinance, 1991 which is still in operation as unconstitutional and void. However, there cannot be any doubt that the actions which have already been taken pursuant to the said Ordinance or any order which has been passed in favour of the Council and/or any order passed by any Courts of law in relation thereto shall remain valid. Despite this judgment, the Council is directed to perform its statutory duties and/or comply with the orders of the Court issued from time to time.

15. It is further clarified that any action taken by the Council shall continue to remain operative unless struck down by a competent authority or a Court of law.

16. It is also clarified that the Council shall hold all examinations for which dates have already been notified and publish the results thereof in accordance with law.

17. In K.P. Verma and I.K. Saran Vs. The State of Bihar and Others, , this Court observed:

However, it may be observed by way of clarification that the judgments so long rendered by the Tribunal cannot either be void or nullities but they must be held to be valid in terms of the de facto doctrine of "holding office". Reference in this connection may be made to the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, .

18. The petitioner No. 1 has been rendering valuable services to the society. It had filed before this Court various public interest litigations. It had also earlier filed applications against the Council bringing to this Court's notice the gross illegalities committed by the Council and because of the action on the part of petitioner No. 1 career of many students could be saved as in one case it was found that the authorities of the Council had functioned so recklessly that the meritorious students who competed for their admission in I. I.Ts. and various other Institutes were declared having failed whereas the less meritorious students were placed in first division.

19. In this view of the matter, petitioner No. 1 is also entitled to costs from the State which is quantified at Rs. 500. This application is accordingly allowed with the aforementioned observations and direction.

Narayan Roy, J.

20. I agree.