
(1997) 03 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No's. 3712 of 1994

Dr. Anirudh Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : (1997) 03 PAT CK 0014

Hon'ble Judges : Ashish N. Trivedi, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Singh, Shree Deva Narayan and Uma Kant Singh in 3712, M/s R.N. Mukhopadhaya, Nand Kishore Singh in 3066, M/s Rajendra Prasad Singh, Rajiv, Sunil Kumar Singh and Ajay Kumar Singh in 2410, for the Appellant; Ganga Prasad Roy, Rajesh Kumar Choudhary, Narendra Kishore Sinha, R.K. Sinha, Abhay Prakash Sahay for State and M/s. Baijnath Prasad and Sunit Srivastava for Respondents 6 and 7 in 3712, for the Respondent

Final Decision : Allowed

Judgement

Ashish N. Trivedi, J.—The petitioner in these three writ petitions have challenged the directions of the State Government in the letter no. 1346 dated 29.2.1994 as a result of which the services of the Officers and employees working in the District Industries Centres at Gaya and Muzaffarpur have not been taken over although the State Government has decided to directly run and manage the two District Industries Centres." The Government of India constituted the Rural Industries Planning Committee vide the Planning Commission letter no. V.S.I.-8(6)/61 which recommended programmes for intensive development of small industries in rural areas and small towns so as to create, maintain and expand non-government employment and in order to achieve the aforesaid objects; 47 Rural Industries Projects were taken up for implementation of the Programmes. Initially in the State of Bihar, Gram Nirman Mandal, Shek-hodoora (Nawada) and Bihar Khadi Gramoudyog Sangh, Pusa were entrusted with the formulation and implementation of the Programmes.

2. The two Projects were centrally sponsored scheme and nucleus funds amounting to Rs. 20 lakhs for each Project had been made available by the Government of India for the period 1962-63 to 1965-66 of the third Five Year Plan and a specified amount for each project was required to be kept in reserve to meet the expenditure in strengthening of staff for managing increased volume of works at the Directorate Headquarters and for subsequent allocation according to need.

3. The State Government with the approval of the Government of India decided to entrust wholly the execution of these two Projects to the aforementioned two Non-Official-Organisations and the State Government had to sanction and provide grants-in-aid. The State Government laid down the manner of utilisation of grants-in-aid by the Non-Official organisations in the letter dated 2.12.1967 by the Under Secretary to the Government of Bihar in the Department of Industries and Mines to the Accountant General, Bihar. Following were the main aims and objects of the Projects:

(i) To evolve effective techniques, methods and programmes which can be extended progressively to other areas of the State having large incidence of unemployment and underemployment.

(ii) To assist in the intensification of various programmes for the development of village and small industries, help in coordinating the functioning of various agencies, bring about the fullest possible participation of financial and co-operative institutions, and the integrated development for the rural and industrial economy in terms of area or regional places. Concerted efforts on the above lines said to achieve progressive extension of small industries to rural areas as a solution to the problem of employment and as one of the means of raising the standards of living.

(iii) Intensive and integrated development of small industries and of processing industries based on agriculture. They are to be implemented as part of a wider and well-coordinated plan of area or regional development.

(iv) Along with other measures, the Projects are intended to promote the development of cooperative agro-industrial economy.

Government of India approved the proposal of the State Government for setting up the Rural Industries Projects to cover the District of Muzaffarpur in the Fifth Five Year Plan and the approval was communicated by the Under Secretary to the Government of India to the Secretary to the Government of Bihar in the Industries and Technical Education Department by the letter dated 2.7.1973 in which it was inter alia clarified that the approval was subject to the terms and conditions contained in the letter dated 25.3.1971 which was generally acceptable to the State Government and a further condition was imposed that the State Government had to implement these Projects by the Organisation headed by late Sri Jai Prakash Narayan.

4. In the Government of India's letter dated 25.3.1971 it was provided that the Central Government would provide financial assistance for the programme to set up 50 new Rural Industries Projects during the Fifth Five Year Plan for a period of five years only, after which the State Government will have to run the Projects on its own so that the Central assistance becomes available for the new series of Projects in the subsequent Five Year Plans. It was further mentioned that the Central assistance to the State Government in regard to the new Projects will be limited to the entire cost of establishment particularly staff for service, research extension, pilot projects, demonstration and also some loans for a period of five years from 1.4.1974 and at the end of five years i.e. 31.3.1979, the Central Assistance for the Projects in the second series will be withdrawn and the State Government will have to run the Projects on their own.

5. It is in this background that the State Government, keeping in view of the communication of the Government of India and their letter dated 2.7.1973, decided that the Rural Industries Projects would be executed by the Muzaffarpur Development Authority and sanction was accordingly accorded for the period from 1.9.1973 to 31.3.1979 by the State Government vide their letter dated 8.1.1974

6. The case of the petitioners is that all of them had been appointed on the posts in the pay-scales sanctioned by the State Government which had been advertised and were duly selected and they possess the requisite qualifications prescribed by the State Government.

7. Various documents have been brought on record by the petitioners to show that management and affairs of the District Industries Centres where the petitioners were appointed by the Non-Governmental Agencies under the directions of the State Government were fully controlled by the State Government and the District Industries Centres were executing Government Projects and were performing governmental functions under the immediate control of the Non-Official Organizations.

8. The grievance of the petitioners is that they having been appointed by the competent Authority and having possessed all the requisite qualifications and having worked for a considerable period, the State Government while deciding to withdraw the Projects from the Non-Official Organizations have arbitrarily and illegally rendered the petitioners without employment inasmuch as the petitioners were appointed only for the purposes of Rural Industries Projects and the reasons assigned for refusing to take over the services of the petitioners are illusory.

9. The petitioners alleged discrimination inasmuch as the State Government while taking over the execution of Projects which were entrusted to Khadi Gramoudhyog Sangh, Darbhanga took over the services of those officers and employees who had been appointed by the said Non-Official Organisation for execution of the Rural Industries Projects at the District Industries Centre,

Darbhanga and the petitioners being similarly situate have been arbitrarily discriminated.

10. In the counter affidavit filed on behalf of the State, identical stand has been taken in each of the Writ Petitions that the impugned order dated 28.2.1994 inter alia provides for formation of District industries Centres at Gaya and Muzaffarpur and the functions performed by the Non-Official Organisations prior to the formation of the District Industries Centres have ceased and since the petitioners are the employees of the Non-Official Organisations they are not entitled to the facilities of the Government employees and have no legal right for absorption in Government service.

11. It has further been stated that it is not possible for the State Government to absorb all the staff of the Non-Official Organisation as the State Government has plenty of experienced staff and officers to control and manage the said District Industries Centres for carrying on the Projects. It has been pointed out that the establishment of District Industries Centres was a programme sponsored by the Central Government which bore 50 per cent of expenditure and remaining was to be borne by the State Government, however, in the year 1992-93, the State Government was informed by the Government of India about the withdrawal of Central assistance for the District Industries Centres and now it has become the responsibility and liability of the State Government to continue the District Industries Centres Programmes from the year 1994-95 and therefore the State Government decided to change the pattern of management of the District Industries Centres at Muzaffarpur and Gaya and the Government decision had been communicated vide the impugned order dated 28.2.1994. It has been admitted that the Centre which was also managed by the Non-Official Organisation at Darbhanga was taken over by the State Government in 1975 but at that time 50 per cent of the expenditure was being met by the Government of India and there was also dearth of trained personnel and therefore their services were also taken over along with the Centre but now that there are plenty of trained personnel and therefore the services of the employees working in the two Centres at Muzaffarpur and Gaya have not been taken over.

12. Learned counsel for the petitioners submitted that none of the two reasons mentioned in the impugned order dated 23.2.1994 justifying the refusal of the State Government to take over the services of the petitioners are in existence and in any event are based on irrelevant considerations and are factually erroneous. Learned counsel submitted that the first reason assigned is that there is difference in procedure for appointment of the officers and employees at the District Industries Centres which were being managed by the two Non-Official Organisations and those working in District Industries Centres directly run and managed by the State Government inasmuch as the impugned order refers to Rules but it does not recite as to which Rule had not been followed nor is it mentioned as what is the infirmity in the procedure and illegality in the appointment of the petitioners.

13. Learned counsel submitted that the second reason for refusing to take over the services of the petitioners is that the State Government has decided to bring about uniformity in running the District Industries Centres is also erroneous inasmuch as it has been clearly stated in the impugned order that the duties and functions which are being performed in the Governmental and Non-Governmental District Industries Centres are identical. Learned counsel contended that the State Government is estopped from refusing to take over the services of the petitioners inasmuch as the petitioners have altered their position and had taken up employment under the two Non-Official Organisation for performing Government work and having altered their position the State Government cannot back out and refuse to absorb the petitioners in the employment of the State Government when the State Government decided to continue the Projects directly.

14. Sri Ganga Prasad Roy, learned Additional Advocate General III on behalf of the State submitted that only the work has been withdrawn from the Non-Official Organisations and assets of the Organisations acquired by their own funds have not been taken by the State Government and the petitioners' grievance can be against Non-Official Organisations only and not against the State Government as the State Government is under no obligation to discharge the liability of those Organisations. Learned counsel submitted that various orders and directions by the State Government were issued to ensure proper utilisation of the grants-in-aid sanctioned and paid to the Non-Official Organisations who were free to manage their affairs in their own manner. Learned counsel then contended that no relief can be granted to the petitioners as they are not Government Servants and their services have not been terminated and it is the prerogative of the State Government to choose the Agency through which their Projects can be executed and since a policy decision has been taken to execute the Projects through the District Industries Centres by the State Government directly such policy decision cannot be interfered by this Court.

15. Having considered the submissions made by the learned counsel for the parties and the material on record I am of the opinion that the impugned directions of the State Government contained in the order dated 28.2.1984 (Annexure T to C.W.J.C. No. 3712 of 1994) refusing to take over the services of the petitioners cannot be sustained. 16. From the facts noticed above it would be evident that the Central Government had clearly and expressly informed the State Government that the Central assistance for the Projects would be available only for specified periods and thereafter the entire expenditure of the Projects was to be borne by the State Government, therefore, it is not open for the State Government to take the plea that since the Central assistance has been withdrawn and the State Government has to bear the entire expenditure they would not take over the services of the petitioners.

16. It is not the case of the State Government that the Projects have been

abandoned or the District Industries Centres run by the two Non-official Organisations have become defunct, on the contrary the stand of the State Government in the Counter Affidavits and the recital made in the order dated 28.2.1994 (Annexure "1") is that since there are more than plenty trained staff, their services would be utilised to run the Centres.

17. In C.W.J.C. No. 3066 of 1994 the petitioners have filed a Supplementary Counter Affidavit (copy of which was served on J.C. to learned Addl. Advocate General HI on 22.6.1994) annexing the tabulated statements (Annexure "11" series) showing the names of posts and vacancies and the incumbents posted in the District Industries Centre, Gaya and other District Industries Centres.

18. A perusal of Annexure "11" series reveals that there are three sanctioned posts of Functional Managers for the District Industries Centre, Gaya against which Dr. Anirudh Prasad had been appointed and other posts are vacant, likewise three sanctioned posts of Project Managers are vacant and so are several other posts. As regard the District Industries Centres Aurangabad all the three posts of Functional Manager are vacant and out of three posts of Project Manager, two are vacant and certain other posts are also vacant. In the District Industries Centre, Jahanabad besides other posts all the four posts of Project Manager are vacant and similar is the case in respect of the District Industries Centre, Nawada as also District Industries Centre, Chapra.

19. From the material on record it is also evident that the staffing pattern had been sanctioned and powers to make appointments had been delegated by the State Government to the appropriate Authority in the District Industries Centres and the Government insisted that the posts in the sanctioned scale of pay be filled up by personnel possessing prescribed qualifications and failure to do so would be seriously viewed.

20. It is not the stand of the State Government that the sanctioned posts have been abolished and it is evident from perusal of Annexure "11" series that the reasons assigned for not taking over the services of the petitioners that there are more than plenty trained staff is factually incorrect as large number of posts are vacant in other District Industries Centres which are being run directly by the State Government. It is also not the case of the State Government nor is it so mentioned in the impugned order that the petitioners were illegally appointed or they have been found unsuitable for continuity on the posts in the District Industries Centres in question, the management of which has been taken over by the State Government. The petitioners had admittedly been appointed to work in the District Industries Centres for execution of the Projects assigned by the State Government.

21. The action of the State Government in refusing to take over the services of the petitioners has resulted in serious miscarriage of justice and prejudice to the petitioners as the petitioners cannot seek employment elsewhere as no such provision has been made by the State Government although funds were being

provided by the State Government for payment of their salary.

22. On 26.10.1994 during the course of hearing it was stated on behalf of the petitioners, which was not disputed by the State Counsel that the State Government is considering to take over the services of the petitioners, accordingly it was directed that the pendency of the Writ Petitions would not be considered an impediment for redressal of the grievances of the petitioners by the State Government and as prayed on behalf of the State, three weeks' time was granted to seek appropriate instructions and the Writ Petitions were ordered to be listed for further hearing on 16.11.1994. On 17.11.1994 Sri Ravi Bhushan Prasad Verma, J.C. to Government Pleader III on the basis of the instructions received by him stated that a reference had been made to the Law Department by the Industries Department and he prayed for and was granted further time to apprise the Court of the decision taken by the State Government in that behalf, accordingly the hearing was adjourned to 19.12.1994 and the State Counsel was directed to produce before the Court the decision which might have been taken by the State Government. Again on 1.5.1996 teamed counsel for the State submitted that he had sought instructions from the appropriate Authority and it would take a little more time to get complete instructions and in view of the ensuing elections, he prayed for and was granted time till 13.5.1996, however, till today the State Counsel has not been able to produce the decision which may have been taken by the State Government in this behalf.

23. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, their Lordships explained the Doctrine of Promissory Estoppel thus-

Doctrine of promissory estoppel has been variously called promissory estoppel", "requisite-estoppel", quasi estoppel" and "new estoppel", It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel" it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting

in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. But if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognised as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. Where the Government makes promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

Their Lordships further held that-

The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency, nor can the Government claim to be the sole judge of its liability and repudiate it on an ex parte appraisal of the circumstances. If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipso dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule

of law.

24. It has been seen that the petitioners were appointed to discharge the duties and functions in the Centrally sponsored Projects and which were to be carried on by the State Government which were specifically entrusted to the Non-Official Organisations who were directed by the State Government to fill up the vacancies in the sanctioned posts in the prescribed scale of pay and it was nowhere provided by the State Government that at a future date though the State Government would continue the Projects yet the officers and employees employed for execution of the Projects would be disbanded.

25. The conduct of the State Government therefore led the petitioners to believe that they would continue in service so long as the Projects continue or their services are terminated in accordance with law and this having not been done the State Government is stopped from disbanding the petitioners and the State Government is obliged to take over the services of the petitioners though it would be open for the State Government to terminate the services of the petitioners or retrench them in accordance with law. It is settled law that under Article 226 of the Constitution policy matters should not be lightly interfered but such policy matters can be interfered with by the Court on the ground of illegality, irrationality or procedural impropriety.

26. It has been seen that the reasons mentioned in the impugned order in refusing to take over the services of the petitioners by the State Government are irrational and non-existent and have resulted in grave injustice to the petitioners.

27. In *K.I. Shephard and others vs. Union of India and others* (AIR 1983 S.C. 686) their Lordships observed

Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content whereof has been enunciated as a proper measure of the level of civilization and Rule of Law prevailing in the country. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken score of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

28. Admittedly no opportunity of hearing was given to the petitioners to show cause as to why their services be not taken over by the State Government and denial of opportunity in disbanding the petitioners from the District industries

Centres renders the decision of the State Government, in refusing to take over the services of the petitioners, void.

29. in C.W.J.C. No. 3712 of 1994. Dr. Anirudh Prasad, the petitioner amended the writ petition and questioned the disciplinary proceedings and the order of suspension dated 13.6.1991 (Annexure "43") passed against him inter alia on the ground that the same is in violation of the interim order passed by this Court. I am not inclined to interfere with the disciplinary proceedings as it is a separate and distinct cause of action and the petitioner may seek redress by agitating the matter in the appropriate proceedings.

30. Accordingly the State Government is directed to take over the services of the petitioners and absorb them in Government Service on such terms and conditions as are applicable to the officers and employees working in other District Industries Centres which are being run and managed by the State Government and it shall be open for the State Government to retrench or terminate the services of the petitioners in accordance with law if the circumstances so warrant and until the petitioners continue in service and the State Government does not absorb them they shall continue to receive the emoluments including the arrears of salary if due, which were being paid to them prior to 28.2.1994 and the directions in the impugned order (Annexure "1" to C.W.J.C. No. 3712 of 1994) to the contrary are set aside. The Writ Petitions are allowed to the extent indicated above but there shall be no order as to costs.