
(1992) 08 PAT CK 0020
In the Patna High Court
Case No : M.J.C. No. 204 of 1992

Dr. Mahachandra Pd. Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Citation : (1992) 2 PLJR 556

Hon'ble Judges : B.C. Basak, C.J;C.S.N. Mishra, J

Bench : Division Bench

Judgement

1. Having regard to the order we propose to pass today, it is not necessary to go into details excepting stating that this arises out of an order passed by us on 19th December, 1991, in C.W.J.C. No. 8629 of 1991. Regarding the same an application for extension of time has been filed which has become infructuous and Anr. contempt application has been filed.

2. Two counter affidavits have been filed on behalf of the Corporation one is the original counter affidavit and the other is the supplementary counter affidavit. In the original counter affidavit they have merely stated that what steps have been taken by the Corporation to obtain money from the State Government. We are not concerned with the same. The Corporation is a statutory Corporation having an independent existence. So far as the Court is concerned, our order is to be complied with by the Corporation and how to get the money is not the concern of the Court. They have filed a supplementary counter affidavit thereafter. Excepting making a general statement that 95% payment has been made, nothing else has been stated. It is stated that there are 15 Units throughout the State but nothing has been stated regarding the same. No details have been given in respect of the amounts paid, if any by these units and to whom and who have not yet been paid. It should be remembered that the order was passed for payment of the liability of the Corporation in respect of sugar canes already supplied to and utilised by the Corporation. Therefore, the records of the Corporation must show as to what amount is due and in respect of which

persons. There was no difficulty in filing an affidavit giving such details. More than six months have passed since our order was passed the violation of which is complained of. We give liberty to the learned advocate for the Corporation and the learned advocate for the Petitioner both to file fresh affidavits. The Corporation will file a second supplementary counter affidavit stating what amount has been paid since our order dated 19th December, 1991, in respect of the persons to whom the amount was due prior to the date of our order. They shall also furnish the details as to the persons whose names appear from the record or from the materials or documents supplied by the Petitioner or any other cane growers, the amount which has not yet been paid and the reasons for the same.

3. So far as the Petitioner is concerned, we direct him to supply the names of members of the Association who had received payment after our order was passed and what payment was received and the names of the members who have not yet received any payment or full payments giving the details of the same. These two affidavits, one by the Petitioner and the other by the Corporation, shall be affirmed by 27th August, 1992, and the matter will appear in our list on 28th August, 1992. Apart from the same, the Petitioner shall also file reply to the counter affidavit filed by the Corporation.

4. We make it clear that so far as the payment is concerned, that will also include the question of interest as provided in the statute and by our order. The affidavit on behalf of the Corporation has to be affirmed by the present Managing Director himself. Personal appearance of the Chairman and the Managing Director of the Bihar State Sugar Corporation is dispensed with until further orders of the Court.

5. In this context, we shall point out one aspect of the matter which shows a very sorry state of affairs in this State and which is not a very uncommon feature. This particular State Government Corporation had taken the plea that it has not been able to pay to the cane growers their dues for the materials supplied to the Corporation several years back for which several court proceedings were instituted, because of paucity of funds. It is supposed to be facing financial crisis and it is supposed to be getting loans/grants from the State Government for payment of such dues. They have obtained the products from the poor cane growers long time back but not paid their dues and Court orders had to be issued. Even after we have passed an order, and though about 8 months have expired, our order has not yet been fully complied with. However, a peculiar situation has emerged. In the one hand, it is stated that this Corporation is in a bad financial condition and it has borrowed money from the State Government and on the other hand, it appears that in September, 1991, the post of Chairman cum Managing Director, which was held by one senior I.A.S. Officer, was bifurcated and two posts were created—one of Chairman and the other of Managing Director. The present Managing Director is also a senior I.A.S. Officer holding that post from October, 1991. So far as the post of Chairman is concerned, it has been specially separately created by such bifurcation. In such a

post a M.L.A. from the district of Gopalganj has been appointed. Admittedly as such Chairman he is entitled to additional remuneration and allowances, over and above the allowances he is getting as an M.L.A. It is admitted before us that this bifurcation is not due to any alleged incompetency of the senior officer holding both the posts before such bifurcation or on the ground of any administrative necessity. Therefore, it is unfortunate that additional liabilities will be incurred by way of appointment of a separate Chairman when the dues of the cane growers, who are poor citizens, are not being paid for the last few years and in spite of the orders of the Court. As no particular of the same has been given, we direct that the present Managing Director and the Chairman to file separate affidavits stating the additional amounts which the present Chairman of this Corporation is entitled, as such Chairman of this Corporation and what amount had actually been drawn by him up to now. Until further orders, no further payment of any amount or any other benefit is to be given to the Chairman as such Chairman. Such payment is to be resumed only after the cane growers have been fully paid, subject to result of this contempt application.

6. However, we make one thing clear. It is not our concern and it should not be the concern of the Court to go into the merits of any purely administrative policy matter of Government, which is exclusively a matter for the Government unless it is challenged on the ground of the same being arbitrary. Whether in a particular State Government Undertaking, there should be one Chairman-cum-Managing Director or whether the said post should be bifurcated into two and a politician or an M.L.A. should be appointed as the Chairman or not is not ordinarily a matter for the Court. However, in the present case there is a violation of the order of the Court in respect of which a contempt application has been filed. There is a question of non-payment to the cane growers for the materials supplied by them and which dues remain unpaid for a number of years and in respect of which orders have been passed by the Court. In the counter affidavit filed on behalf of the Corporation a plea has been taken that paucity of fund is the reason for non-compliance of the order of the Court. In such circumstances the Court is certainly entitled to take into consideration whether such plea is bona fide or not and in that context we are entitled to enquire as to whether the Corporation concerned is incurring any additional expenditure by way of providing an M.L.A. with "perks" and allowances as Chairman of the Corporation, thereby adding to its financial burden when at the same time they are taking up the plea of paucity of fund. This is certainly a matter within the scope of enquiry of the Court. The question is whether this is an example of "social justice".