
(2003) 06 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 5898 of 1991

Dr. Rajnandan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Citation : (2003) 06 PAT CK 0017

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition has been filed for salary and allowances and facilities in the light of the decision of the State Government contained in Annexures 2 and 2/A.

2. The petitioner during the relevant time was Chairman of the Bihar State Agro Industries Development Corporation Limited. By Annexure-2 the Joint Secretary, Parliamentary Affairs Department, Government of Bihar, communicated the decision of the State Government to extend the facilities admissible to Cabinet Ministers/ Ministers of State to those Chairman of different Boards and Corporations, who had held the office of the Cabinet Minister or Minister of State respectively in the past. Such of the Chairman who had not held the office of Cabinet Minister or Minister of State in the past were also allowed the facilities available to Ministers of State. Annexure 2/A specified the particulars of the facilities of the Minister of State. The petitioner did not hold the office of Cabinet Minister or Minister of State in the past. According to him by virtue of the later part of the above decision contained in Annexure-2, he was entitled to the facilities etc. admissible to Ministers of State.

3. The case of the petitioner is that under Notification No. 521 dated 15-1-1988 of the Agriculture Department he was appointed as Chairman of the Bihar State Agro Industries Development Corporation Limited (in short the Corporation) and he discharged the duties and functions of the Chairman upto 17-5-1990 when the Chairman of various Boards and Corporation including himself, were removed after change of the Government, even though the petitioner had not completed

his tenure of three years. Before his appointment under Resolution No. 885 dated 9-11-1987, the Government of Bihar had taken a general decision to extend the facilities including salary and other allowances to the Chairman of different Boards and Corporation at par with the Cabinet Minister or Minister of State as the case may be, as indicated above. As a result of the said decision the petitioner was entitled to the facilities available to a Minister of State including salary and other allowances. After he was removed from the office of the Chairman he filed various representations but payments were not made. In the circumstances he has moved this Court for direction upon the respondents to pay him salary and allowances, besides other facilities admissible to a Minister of State.

4. A counter-affidavit has been filed on behalf of the Corporation by its Managing Director wherein it has been stated that the corporation is a Company registered under the Companies Act, 1956 and governed by its Memorandum of Association and the Articles of Association. Under Article 76 of the Articles of Association the business of the Company is transacted/managed by the Board of Directors subject to the control of the Government. Under Article 72(2), Subject to the provisions of Section 252 of the Companies Act, the Governor is required to determine in writing, from time to time, the number of Directors not less than three and more than nine in number. Under Article 72(d) the Governor appoints such number of Directors as may be determined from time to time in accordance with the maximum limit fixed under Article 72(a). The Directors hold the office during the pleasure of the Governor subject to maximum term of three years, and in the event of removal or in the event of any vacancy in the office of the Directors caused by resignation, death or otherwise in terms of Article 84 or Section 283 of the Companies Act, the vacancies are filled by fresh appointment in place of the previous incumbent Article 78(a) refers to the terms and conditions of appointment and it would be useful to quote the same for the sake of ready reference, as under :

"The Governor shall appoint, from amongst the members of the Board for the time being a Chairman of the Board and a Managing Director for such period and subject to such terms and conditions and upon such remuneration (subject to the provisions of Section 314 of the Act) as he thinks fit. Any such Chairman or Managing Director appointed to any such office shall, if he ceases to hold the post of Director for any cause, ipso facto, immediately cease to be such Chairman/Managing Director. Provided that....."

The respondents have accordingly taken the stand that in view of the above provisions of the Articles of Association the Chairman does not have any fixed tenure. His appointment as Chairman is co-terminus with his office as Director. And further, he holds the office on the pleasure of the Governor subject to maximum period of three years.

5. As regards the payment of salary and other allowances and facilities at par with Ministers of State, the stand of the respondents is that Respondent No. 885

dated 9-11-1987 has no automatic application. The resolution only lays down the details of the facilities besides salary and allowances admissible to the Chairman of Boards and Corporation but without individual notification in respect of particular Chairman or Chairman they are not entitled to the same. To buttress the point reference has been made to Notification No. 909 dated 19-11-1991 in respect of the then Chairman of the Corporation Shri Vishwanath Singh. No such notification was issued in the case of the petitioner and, therefore, he cannot claim the benefits in terms of Annexures 2 and 2/A.

6. The counter-affidavit also sets out details of the facilities provided to the predecessor Chairman prior to the petitioner and the petitioner as well. They include the services of two Assistants, one Typist and two Peons, staff Car with free patrol consumed on journey, its repairs and maintenance, two telephones one in the office and the other at the residence, honorarium for the sittings and Travelling Allowance, House Rent Allowance, Furniture and the Medical Allowance. It has been stated that the petitioner was aware of the facilities made available to his predecessor. Between 15-1-1988 and 17-4-1990 seven meetings of the Board of Directors were held and the petitioner never claimed the facilities or salary and allowances at par with Ministers of State except those provided to his predecessor in office. In one of the meetings held on 24-3-1990 one of the Directors, Smt. Banarasi Devi, wanted to know whether any direction regarding additional facilities for Chairman and the Directors had been received from the Government. The Managing Director informed the Board of Directors that till date no instruction had been received from the Agriculture Department i.e. Administrative Department. The Chairman i.e. the petitioner, in course of discussions informed that his claim was pending since long and the Board should take a decision on receipt of instructions from the Government. After deliberations the Board decided that on receipt of the instructions from the Government it will be proper to place the matter in the Board's meeting before the payment process starts.

7. The stand of the respondents thus is that the facilities specified in Annexure 2/A at par with the Minister of State are not automatically available to any Chairman of the Board or Corporation unless individual notification as issued. The facilities already provided to the previous Chairman of the Corporation were made available to the petitioner too.

8. In my opinion, what starer at the face of the petitioner is that the appointments of the Directors or Chairman of the Corporation are made under the relevant provisions of the Articles of Association of the Corporation subject to such terms and conditions and upon such remunerations as the Governor may fix under Article 78(a) of the Articles of Association. No doubt, decision of the Governor under Article 78(a) or for that matter Article 72 referred to above, is not his own decision, he acts on the aid and advice of the Council of Ministers. Nevertheless the exercise of power is under the Companies Act read with Articles of Associations. The claim of the petitioner, if any, thus is to be considered within

the parameters of the Articles of Association and the Companies Act.

9. In the case of Manikant Pathak and Others Vs. State of Bihar and Others, , a Full Bench of this Court has held that the Government Corporations/ Companies incorporated under the Companies Act are "State" within the meaning of Article 12 of the Constitution and therefore, amenable to the writ jurisdiction of the High Court. However, in view of the decision of the Supreme Court in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , as also other decisions referred to in the judgment, it was not possible to issue any direction to the State Government to pay salary to its employees and therefore, the claim was not maintainable against the State of Bihar. The Court pointed out the distinction between the Government Companies created by statute and those incorporation under the Companies Act and observed that so far as the statutory Corporations are concerned the question as to liability of the State in the context of their employees would depend on the provisions of the statutes concerned. So far as the Companies incorporated under the Companies Act are concerned the liability, if any, was of the concerned Company or corporation and not of the Government of Bihar. It would be useful to quote the relevant part of the judgment in Heavy Engineering Mazdoor Union v. State of Bihar as under:

"As incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the person subscribing to its memorandum of association and others joining it as members are regarded as a body incorporated or a corporation aggregate and the new person beings to function as an entity (Cf. Saloman v. Saloman and Company, 1897 AC 22). Its rights and obligations are different from those of its shareholders ... The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its article of association. Therefore, the mere fact that the entire share capital of the respondent company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid, distinct entitles, the fact that the President of India and certain officers hold all its share does not make the company an agent either of the President or the Central Government... It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it including the power to appoint directors and even the power to give directions as to how the company should function, the power to determine the wages and salary payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a Corporation is an agent of the State must depend on the facts of each case. Where statutes setting up a corporation so provides such a Corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioner, 1901-2 K.B. 7881

where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principles. In the absence of a statutory provision however a Commercial Corporation acting on its own behalf even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directions of a Corporation and he is entitled to call for information to give directions, which are binding on the Directors and to supervise over the conduct of the business of the Corporation does not render the corporation as an agent of the Government."

10. The claim of the petitioner has thus to be considered in the light of the above said decisions. It is clear that no direction can be issued for payment of salary and allowances and/or other facilities against the State of Bihar. The claim, if any, can be made only against the Corporation. In para 26 of the counter-affidavit it has been stated that the claim of the petitioner was finally considered in the meeting of the Board of Directors on 11-7-1991 vide Item No. 11 of the agenda and finding no justification in the claim the Board was pleased to reject the same after due deliberations. The decision was confirmed in the subsequent meeting on 10-2-1992. In course of hearing of the case it was stated at the Bar that the Corporation has since gone in liquidation and winding up petition has been filed in this Court in the circumstances, the petitioner has no option but to place his claim in the winding up proceeding, if so advised, in accordance with law.

11. In the result, I do not find any merit in this writ petition which is accordingly dismissed but without any order as to costs.

P.N. Yadav, J.

I agree.