

(2000) 03 PAT CK 0025

In the Patna High Court

Case No : C.W.J.C. No's. 11835 of 1996, 2544, 6284 and 10496 of 1997 and 8575 of 1998

Gopalganj C.D. and C.M. Union Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Citation : (2000) 3 PLJR 159

Hon'ble Judges : Ravi S. Dhavan, C.J;Aftab Alam, J

Bench : Division Bench

Advocate : Y.V. Giri, P.K. Shahi, J. Saran and S.K. Giri, for the Appellant; J.P. Karn, for Union of India, G.P. Roy and Azfar Hasan for State, for the Respondent

Judgement

1. This matter, a public interest litigation, has been pending since 1996 when initially on 20.11.1996 notices were issued to all the Respondents; to the State Respondent through the learned Advocate General, Bihar and to the Central Government Respondent through the learned SCCG.

2. In an all too important aspect which one notices visually at the outset relating the administration of any State or district is the means of communication. Leaving aside transport by air, which is meant for the affluent and those who travel on expense accounts, surface transport is basically by road and rail.

3. This writ petition highlights the bad state of affairs, to put it mildly, of the roads in the State of Bihar.

4. The roads fall within the jurisdiction of two Governments. The national highways, under the jurisdiction of the Government of India and the State highways under the jurisdiction of the State Government. It is contended in the petition and not disputed in reply that the roads have collapsed with cracks, potholes and yet no roads at all and those who are in authority take to the most luxurious way in escaping the bad roads. This needs to be recorded as this information lies on record which was filed by the department of Civil Aviation

under the orders of the Court. A report was placed before the Court in November, 1998 which shows a log of the use of the State aircrafts by persons in position in the State Government. The log begins from 3.4.1998 upto 20.4.1998. It shows that type of aircraft which was used, the dignitary who used it, the journey undertaken and the hours of use. People in high positions have been jet-setting within the State and in and out of the State. This perhaps explains the phenomenon of the roads not being used by those whose business it is to know the state of the road, as the roads being dismissed as not capable of being used. Thus, these dignitaries, those who can manage it, take to the air. The common man is left to find the road. The media reports that even the identity of the road at places has disappeared.

5. A lot of affidavits have been filed in this case after the court started monitoring the proceedings. The important orders are those as were passed by the previous Division Benches dated 19.2.1997 by the Hon''ble D.P. Wadhwa, CJ and Hon''ble S.J. Mukhopadhyaya, J, 24.2.1997 by the same Hon''ble Bench, 2.9.1997 by the Hon''ble B.M. Lal, CJ and Hon''ble S.K. Singh J; then an order of 30.9.1997 by the same Hon''ble Bench. Then there is an order of 4.2.1998 of Hon''ble B.M. Lal, CJ and Hon''ble S.K. Singh, J. by which the reports as were received from the District Magistrates concerned were directed to be sent to the Chief Engineer, National Highway-cum-Engineer-in-Chief. The proceedings thereafter continue recording the concern of the court on the state of the roads and highways in Bihar, the allocation of funds and the use of them. Then there is an order which was passed on 9.12.1999 by the Hon''ble B.P. Singh, ACJ and Hon''ble I.P. Singh, J. This order expressed the state of affairs summing up the situation as a depressing state of affairs where nothing appears to have moved as from the time when the petition had been filed and of the situation getting worse. In this order, the court recorded:

It is unbelievable that if such huge amounts are spent on maintenance and upkeep of the roads, and the work is actually done, the roads should be in such a bad condition. The state excuse given by the State Government that on account of floods or rains the roads are damaged, is not available to the State Government. There are other States in this country which have more rain than Bihar and yet their national highways and other roads are maintained in much better condition. It cannot also be said that modern technology is not available to the State of Bihar. The poor construction/repairs of road is really a result of the apathetic attitude of the officers of the State towards the condition of the roads in this State, little realising that good roads greatly contribute to the prosperity of the State and its people.

6. Not to be ignored is the other observation recorded in this order about the Central Government. It would be best that the observation in this order of 9.12.1999, is referred to. It is recorded:

Since the Union Government has failed to maintain the national highway in a proper state of repair by employing the State of Bihar as its executing agency,

we feel that in the interest of the State and the people of the State, the Union Government should take over the maintenance of the national highways in the State of Bihar, since it is the primary responsibility of the Union Government to maintain the national highways.

7. The court had sought its priority in its earlier orders by referring to certain highways, both national and State.

8. Today as this matter has been under consideration since yesterday, the impression which the court gets is that no information worth the name is available for the court so as to show to the court the progress which may have been made from the time when notices were issued on this petition and as of date.

9. A lot of figures have been given to the court as to how much fund had been allocated. For instance, learned A.A.G. III intimated to the court that for the year, 1999-2000 the Ministry of Surface Transport, Government of India made provision for a gross amount of Rs. 175.83 crores. In addition he indicated that a gross amount of Rs. 286.52 crores had also been allocated for the State roads. As present the court is not going into the question of how much relates to a plan allocation or non-plan allocation. Suffice it to say that the proof of the pudding is in eating it. Counsel for the Petitioners, learned A.A.G. III or counsel for the Government of India acknowledge that the State of the roads in the State of Bihar is in a pitiable condition.

10. The court had required information from learned Standing Counsel, Central Government referring to the earlier orders which had been passed in this case. Yesterday, the court was told that this information would be available. Today, the court is being told on instructions, received by learned Standing Counsel, Central Government, that the officials incharge, namely, the Director General, Ministry of Surface Transport cannot come to instruct the Standing Counsel unless the permission of the Minister concerned is received. In this regard, the court reminds itself of an observation which was recorded in the order of 19.2.1997 passed by their Lordships the Hon'ble D.P. Wadhwa, CJ and Hon'ble S.J. Mukhopadhyaya, J. In this order, it is recorded:

If so required, we may call the Director General of the Surface Transport Ministry as it does appear to us that no officer of the higher rank has ever made inspection and that inspection had always been done by officers of lower level.

11. In this order the court has done nothing except to recapitulate the earlier orders and seek only that much information which the court had desired on its earlier orders. The last objection which has been raised by learned S.C.C.G. is that the National Highway Authority of India has not been made party to the cause.

12. The court is constrained to record that on this public interest litigation no interest apparently appears to be shown by either of the Governments except to

ensure now this matter may not proceed.

13. In a State where local self Government is missing and not available as there are no Panchayats nor municipalities which can take the responsibilities in their respective spheres to monitor the need of civic amenities not excluding State highways or national highways, the fact that a public interest litigation draws the attention of the High Court to these matters of local self Government. the High Court is only a safety valve, to listen to these grievances as the High Court is the only venue available where these matters are being addressed. The time has now come for the High Court to record that this Court has become a court of common cause in the absence of local Government.

14. Since 1996 when this petition was brought and as of today no straight answer is coming to the court whether any progress has been made on the road system which has, collapsed. By this time the national highways should have received the repairs. This Court is not going to make odious comparisons with other States. But the response which comes from the State counsel only shows that no one is prepared to take responsibility in a matter of paramount importance, that is the means of transport and travel which is not possible without surface transport facilities.

15. During the course of hearing the court had wanted to know about the roads which had been given priority as have been referred to in the earlier orders of the court (reference order of 19.2.1997). The court is not interested to know the statistics of how much patch work is going on. A report has been filed on behalf of the State which goes into 740 pages. The report seems to be cluttered with information about pot/patch and minor repair. This pot hole patching of highways, State or national will not do. What the court required to know is that if the two Governments are serious, they must place before the court the quantum of equipments made available to take care of the major repairs to the national highways. This equipment is impliedly accepted to be (a) hot mix plants, (b) road rollers, (c) spiker/paver machines, and (d) molten bitumen and gravel spreading equipment. Despite taking instructions, counsel for the two Governments could not come out with this information. This only shows that what has been filed in court is just patch work and if things are to move, then equipments have to be moved by the side of the road to begin the process to repair and restore a highway with quality and in continuity and not patch work which tears with the first shower.

16. This is not a matter, as the court had recorded earlier in its order on 19.2.1997, which can be left to the "officers of lower level".

17. At the request of the learned Counsel appearing on behalf of the State and the Union of India, let this matter be listed on April 6, 2000.