

(1986) 01 PAT CK 0043

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 356 1985

Kripalu Shankar

APPELLANT

Vs

State of Bihar and 9 others

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Citation : (1986) PLJR 319

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : Krishna Prakash Sinha and Siya Sharan Pd. Sinha, for the Appellant; Ram Balak Mahto (Advocate General), S. Hoda (S.C. 3) and Mihir Kumar Jha (J.C. to S.C. 3). for Opp. party Nos. 1, 2 and 3, M/s S. Hoda (S.C. 3) and Mihir Kumar Jha (J.C. to SC 3). for Opp. party Nos. 4 and 6, M/s T.K. Jha, Shailendra Kumar Jha, R.P. Sinha "Rajesh", Shardananda Jha, Ramchandra Jha and B.K. Verma . for Opp. party No. 5, Mr. Shrawan Kumar . for Opp. party No. 7, Mr. Ram Balak Mahto, A.G. for Opp. party No. 8, Mr. S. Hoda (S.C. 3) for Opp. party Nos. 1 and 10, for the Respondent

Judgement

Uday Sinha, J

1. In this contempt proceeding rule was issued by this Court suo motu. In the Irrigation Department of the State there is a post of Public Relation Officer (hereinafter called "P.R.O."). This post became vacant sometime in 1979. One Arun Kumar Verma was appointed on that post for six months. Kripalu Shankar, who was discharging the function of P.R.O., the petitioner, laid claim to that post. Having met with a rebuff from the Secretary, he filed C.W.J.C. No. 3623 of 1979. When that case was put up for consideration, it was said on behalf of the State that Mr. Verma had been appointed Ad hoc only for a period of six months on temporary basis. It was also stated that after the expiry of six months, the matter will be referred to the Public Service Commission for consideration and at that stage the case of Kripalu Shankar also would be considered. The assurance given by the State that Kripalu Shankar's case would also be considered impelled the petitioner to withdraw his application. The application was,

accordingly, permitted to be withdrawn by order dated 19.12.1979. The tenor of the order passed in that case clearly shows that Government had given the assurance that the matter would receive considerations of the Public Service Commission and that no appointment will be made without their concurrence. The assurance given by the State was completely thrown to the winds. No reference was ever made to the Public Service Commission for regular appointment. Sometime in 1980 Kripalu Shankar and S.N. Sharma laid claim to the post of P.R.O. in the Irrigation Department. Matters kept on dilly dallying without any reference having been made to the Public Service Commission. Thereafter the complexion of the Government changed and Dr. Jagannath Mishra became the Chief Minister. In April, 1983 the State Government appointed Subh Chandra Jha as P.R.O., again on Ad-hoc basis That led Shiv Nandan Sharma to file C.W.J.C. No. 1534 of 1983 which was disposed of on 4.5.1983. This appointment was made without any advertisement and without consultation with the Public Service Commission.

It was contended on behalf of S.N. Sharma that all eligible persons must get the opportunity of being considered for the post. Once again learned Advocate General got up to say that the appointment of Subh Chandra Jha was only Ad-hoc for six months, on account of administrative exigency, This time this Court did not permit simple withdrawal, but passed an operative order, the relevant part of which reads as follows:

In that circumstance, we direct that the post of Public Relation Officer in the Irrigation Department, on which respondents No. 3 has been appointed on Ad-hoc basis, should be filled up in a regular way. In case the appointment is not made within the period of six months, the Ad-hoc appointment shall stand terminated. We further direct that the fact that respondent No. 3 had worked on the post on Ad-hoc basis will not be taken to be a qualification for the purpose of any appointment through regular method on the post of Public Relation Officer.

The application was thus disposed of with the aforesaid observations and directions. On the first occasion, i.e. in 1979, the State Government did not keep up to its undertaking. On the second occasion also the officers in the Secretariat chose to completely disregard the two directions of this Court, namely, that the Ad-hoc appointment of Subh Chandra Jha would not be taken to be a qualification for the purpose of appointment through regular method on the post of P.R.O. Subh Chandra Jha continues to be P.R.O. till this day. The six months period expired on 17.10.1983, but no order terminating his service was passed. In the course of movement of the file, the Legal Remembrancer of this State, despite knowledge of the order of this Court, opined that the concurrence of the Public Service Commission may be obtained for another Ad-hoc appointment.

1(a). Since January, 1985 the illegal retention of Subh Chandra Jha was agitated in the legislative Assembly. On 8.4.1983 Shiv Nandan Sharma filed C.W.J.C. No. 1534 of 1983. The application was listed for admission on 14.4.1983. The State took adjournment in the case in order to seek instruction in the matter. After

adjournment had been granted and before it could be listed for admission, opposite party contemner No. 5 was once again appointed P.R.O. Ad-hoc on 18.4.1983. At the same time the Public Service Commission was asked to give concurrence to the Ad-hoc appointment of Subh Chandra Jha as advised by Shrideo Mishra, Legal Remembrancer and the Commission like a post office granted concurrence to the Ad-hoc appointment of Subh Chandra Jha. On 2.4.1985 an advertisement was published for the post of P.R.O. That brought the petitioner rushing to this Court by filing C.W.J.C. No. 2554 of 1985. It was alleged by the petitioner that the advertisement was specially drafted to suit only Subh Chandra Jha. The matter was listed for admission on 13.6.1985. While hearing the admission matter, the Court felt that the direction of this Court in C.W.J.C. No. 1534 of 1983 had been blatantly disregarded. Rule was, therefore, issued calling upon the respondents as well as one A.U. Sharma, Development Commissioner, 20 Point Programme to show cause why they should not be punished for contempt of this Court by ignoring the order of this Court passed in C.W.J.C. No. 1534 of 1983 on 4.5.1983.

2. Those proceeded against in this proceeding for contempt of this court are firstly, the State of Bihar through Irrigation Commissioner J.C. Kundra, secondly, the Commissioner-Cum Secretary, Irrigation Department, thirdly, Shrideo Mishra, Secretary-Cum-Legal Remembrancer, Government of Bihar, fourthly Bihar Public Service Commission, fifthly, Subh Chandra Jha, sixthly, Special Executive Officer, Bihar Public Service Commission, Patna and A.U. Sharma, Development Commissioner. Later Radha Singh, Additional Commissioner, Irrigation Department, Birkeshwar Prasad Singh Member, Bihar Public Service Commission and Sanjeevan Sharma, Section Officer in Bihar Public Service Commission were also noticed to show cause why they also should not be punished for contempt of this Court.

3. The State Government has ignored the order of the High Court. It had, therefore, to be made Party. The Irrigation Commissioner-Cum-Secretary is responsible for every act of his Department. It was, therefore, but natural that the proceeding should be drawn up against him also. Shrideo Mishra, Legal Remembrancer was proceeded against, as he advised the State Government on 10.10.83 to seek concurrence from the Commission in the fresh Ad-hoc appointment of Subh Chandra Jha knowing fully well the dictate of this Court that services of Subh Chandra Jha must be terminated after the expiry of six months. Incidentally, it may be stated once again that the six months period had expired on 17.10.1983. The Public Service Commission and the Special Executive Officer thereof have been proceeded against for granting concurrence to the Ad-hoc appointment of Subh Chandra Jha. Subh Chandra Jha himself has been proceeded against for "master-minding the whole affair. Proceeding is against him too on that score, The proceeding was initiated against A.U. Sharma on the footing that he was the Irrigation Commissioner in October, 1983 when the services of Subh Chandra Jha had to be terminated. That is how the contemnors have been proceeded against.

4. The State of Bihar has been proceeded against as body corporate. A common show cause has been filed on behalf of opposite party Nos. 1 and 2. On the day rule was issued, J.C. Kundra happened to be the Commissioner-Cum-Secretary, Irrigation Department. He has stated in paragraph 13 of his show cause that he had joined as Commissioner, Irrigation Department only on 23.5.1985 and that he had never dealt with the file at any earlier stage. In paragraph 16 of the common show cause, it has been submitted that any omissions while expressing view on the file was not wilful "and again deep regret was being expressed for any such omission". While expressing regret, the stand taken by respondents opposite party Nos. 1 and 2 is that no contempt had been committed by them. That stand has been taken on two counts. Firstly, for the reason that expression of view in the notings of the file whether they be right or wrong do not amount to contempt of Court and secondly, because no order appointing Subh Chandra Jha, respondent opposite party No. 5 was passed after 17.10.1983 and, therefore, there was no disregard of the order of the High Court.

5. The stand of the Legal Remembrancer and Judicial Secretary, Government of Bihar, respondent No. 3 is that no contempt had been committed by him, as Kripalu Shankar was not the petitioner in C.W.J.C. No. 1534 of 1983 in which order had been passed directing that the services of Subh Chandra Jha, respondent No. 5 must be terminated on 17-10-1983 i.e. on completion of the six months period of Ad-hoc appointment. His stand also is that the various notings of different officers did not constitute contempt of this Court, as Government has not accepted the erroneous views recorded by various officers.

In special, respondent No. 3 has stated that he had advised the Government to obtain an order from the High Court for fresh appointment on Ad-hoc basis. He has asserted the right of the State Government to make Ad-hoc appointment, since that would be a fresh appointment. The Legal Remembrancer also expressed regret for any omission by him in expressing his view in regard to the appointment of Subh Chandra Jha.

6. The Bihar Public Service Commission through its Chairman and Special Executive Officer thereon are respondents 4 and 6 to this proceeding. The Chairman Public Service Commission has shown cause on behalf of the Commission. It has been averred in paragraph 3 of the show cause that the Irrigation Department by its letter dated 21-3-1985 submitted a proposal for appointment of Subh Chandra Jha as Public Relation Officer from 18-10-1983 till a P.R.O. was appointed on regular basis through open advertisement by the Commission. It was further stated in that letter that the appointment of Subh Chandra Jha from 18-10-1983 should be treated as fresh appointment and that the Commission may grant concurrence to this appointment from that day. The Chairman has averred in the same paragraph that the Irrigation Department did not mention anything in that letter about the order of this Court passed in C.W.J.C. No. 1534 of 1983. After examining the matter the Commission gave concurrence to the appointment of Subh Chandra Jha for six month from the

date, of the letter which was done on 8.5.1985. The Chairman has further averred that when the Commission came to know about the order passed by this High Court, it withdrew the concurrence. The withdrawal of concurrence was communicated to the Irrigation Department by letter No. 265 dated 13.7.1985.

7. Arjun Prasad, Special Executive Officer respondent No. 6 has stated in paragraph 3 that the Commission had no intention to disregard this Court's order passed in C.W.J.C. No 1534 of 1983. His stand is the same as that of Chairman, Public Service Commission.

8. Subh Chandra Jha, respondent No. 5 appears to be lynch pin of this whole drama. He was appointed P.R.O. on Ad-hoc basis on the approval of the council of Ministers. The approval was accorded on 7-4-1983 in pay scale of Rs. 1350-2000 plus Rs. 100/- as special pay. He joined his post on 18-4-1983. His stand is that this Court did not issue any direction to him and, therefore, he had not violated anything. No contempt was, therefore, committed by him. He has justified his selection and appointment. At the time of argument Mr. Tara Kant Jha appearing on his behalf submitted that he had not done anything to invite the wrath of the High Court. In his very subtle manner Mr. Jha submitted that respondent No. 5 had not disobeyed any order of this Court. He stated that he had been working from 18-10-1983 without any appointment, salary or allowance.

9. The stand of A.U. Sharma, who happened to be at one time Irrigation Commissioner is that he was not the Irrigation Commissioner on 18-10-1983 and, therefore, he had not committed contempt of this Court. In a supplementary show cause he has further stated that in June, 1984 when he requested the Commission to take steps for regular appointment of P.R.O., he had enclosed the order of the High Court placing a ban on the appointment or continuance of Subh Chandra Jha on Ad hoc basis after 17-10-1983.

10. Upon these respective causes shown by the contemnors, it has to be seen whether any contempt of this Court has taken place.

11. The undisputed facts are that the High Court ordered that on the expiry of six months, i.e. on 17.10.1983, the Ad-hoc appointment of Subh Chandra Jha, respondent No. 5 must be terminated. The second undisputed fact is that he is till working as P.R.O. and the officers acquiesced in his services although no specific order had been passed retaining his services. The third outstanding feature is that concurrence of the Public Service Commission was sought from the Bihar Public service Commission (in short "B.P.S.C.") for a fresh Ad-hoc appointment of Subh Chandra Jha. The last undisputed fact is that the B.P.S.C. did concur in May, 1985 in the Ad-hoc appointment of Subh Chandra Jha till October 1985. From these, it is obvious that the order of the High Court for termination of Ad-hoc appointment of Subh Chandra Jha was completely ignored. There can be no worse case of blatant disregard of the judicial order of this Court. Contempt of this Court has, therefore, obviously been committed.

12. The next question is who are the persons responsible for committing contempt of this Court. The State of Bihar as a juristic person has certainly not committed contempt because the file shows that the then Chief Minister Shri Chandrasekhar Singh wrote on 8-1-1984 that the High Court order must be obeyed. On 10.3.1984 the Chief Secretary noted that Shri Jha, i.e. Subh Chandra Jha should not be granted Ad-hoc appointment. There is no one better to represent the State than the Chief Minister and the Chief Secretary. The State of Bihar, therefore, cannot be held to be guilty of contempt of this Court. That being the conclusion, J.C. Kundra, who happened to be Irrigation Commissioner cannot be held guilty of contempt of this Court. He joined as Irrigation Commissioner only on 23.5.1985, after the process for procuring and grant of concurrence of the B.P.S.C., had been accomplished. The rule, therefore, issued against J.C. Kundra is discharged.

13. On 10.10.83 Shrideo Mishra, the then Legal Remembrancer advised the Government to obtain concurrence of the B.P.S.C. in the Ad-hoc appointment of Subh Chandra Jha until regular appointment was made. On 17.11.1984 he noted once again for obtaining the concurrence of the B.P.S.C. He noted clearly that Ad-hoc appointment with the concurrence of the Commission would not be disregard of the order of the High Court. The noting is rather unfortunate. It is difficult to reconcile how a Legal Remembrancer who is a Senior District Judge could note on a file that appointing Ad-hoc would not be in the teeth of the High Court order. His opinion thus does amount to contempt of this Court. His noting lends some support to the submission advanced on behalf of Kripalu Shankar that a group of officers in the Secretariat were determined by hook or by crook to retain Subh Chandra Jha in office in clear contravention of the High Court order. On 7.11.1983, Government Pleader No. IV clearly opined the State Government that the Ad-hoc appointment of Subh Chandra Jha cannot be continued beyond 4.10.1983. The opinion of learned Government Pleader was approved by learned Advocate General. In the face of the opinion of the Advocate General, it is rather unfortunate that the Legal Remembrancer Mr. Mishra advised that the concurrence of the B.P.S.C. be obtained.

14. Mr. A.U. Sharma joined in April, 1984. The concurrence of the B.P.S.C. was obtained on the advice of the Legal Remembrancer. Mr. Sharma, therefore, may be pardoned for not having appreciated the explicit order of the High Court. He has averred, and the file shows that the order of the High Court was made known to the B.P.S.C. In that view of the matter, I am inclined to give him the benefit of doubt. The rule is thus discharged against him.

15. Respondent No. 6 Arjun Prasad was Special Executive Officer of the B.P.S.C. He has falsely stated in paragraph 3 of his show cause that the Irrigation Department had not mentioned in their communications to the Commission about the order passed by the High Court in relation to Subh Chandra Jha. Even so, he has not taken any part in the grant of concurrence to the Ad-hoc appointment of Subh Chandra Jha. He can, therefore, hardly be connected for

contempt of this Court. The rule is, therefore, discharged against him as well.

16. Mr. A.K.M. Hassan joined the Office of Chairman, Bihar Public Service Commission after concurrence had been given to the Ad-hoc appointment of Subh Chandra Jha. Personally, therefore, he cannot be held guilty of committing contempt of this Court. The rule issued against him is, therefore, discharged.

17. Arguments in contempt matter concluded on 12.8.1985 and judgment was reserved. While going through the Government and the B.P.S.C. files it appeared that Mrs. Radha Singh, the then Additional Irrigation Commissioner and Birkeshwar Prasad Singh (Dr. B.P. Singh), Member B.P.S.C. and Sanjeevan Sharma Section officer, B.P.S.C. were also liable to answer for their contempt. Notices were, therefore, directed to be issued on 22.8.1985 to them as well. They were heard on 25.9.1985. Mrs. Radha Singh has shown excuse. The concurrence of the Commission was sought under her orders. In the cause shown by her it has been stated that the letter dated 21.3.1985 was sent to the Commission because of misappreciation of the High Court order and mistaken notion that if Subh Chandra Jha was appointed afresh Ad-hoc with the concurrence of the Commission it would not be violation of the Court's order. Her action in seeking concurrence of the B.P.S.C. was clear disobedience of this Court's order. She is, therefore, guilty of contempt of this Court. She has tendered unqualified apology. I have some difficulty in accepting this apology, as I am not able to reconcile to her submission that she did not appreciate the import of the order of the High Court. An I.A.S. of Commissioner's rank is certainly expected to appreciate this much.

18. Mr. Birkeshwar Prasad Singh (Dr. B.P. Singh) has cut a most sorry figure in this whole episode. The file bears ample testimony that the explicit order of the High Court was made known to the Commission and yet he ordered issuance of concurrence all by himself. He was not the Chairman of the B.P.S.C. then. I am somewhat at a loss to appreciate how he ordered issuance of concurrence to the Ad-hoc appointment. He did not even discuss the matter with any other member of the B.P.S.C. Without any discussion he ordered on the file on 29.4.1985 that the matter had been considered by the Commission on 26.4.1985 and that the Commission had agreed to grant the concurrence asked for. I am somewhat at a loss how Mr. B.P. Singh converted himself into the Commission and ordered issuance of the concurrence. That too by an oral order which was recorded by him on 29.4.1985. Mr. J. Kumar and Bachaspati Thakur were shown the file on 7.5.1985 and as they were faced with a fait accompli, they put their endorsement to the order of Mr. Birkeshwar Prasad Singh. It is difficult for me to appreciate what were the motivations of Mr. Birkeshwar Prasad Singh in ordering issuance of concurrence to the Ad-hoc appointment of Subh Chandra Jha may be there was some attraction held out to him by some one in power in the Government. That, however, is not before us. Despite these facts Mr. B.P. Singh has stated in paragraph 2 of his show cause that he acted in a bonafide manner. I cannot conceive of a more malafide action. The fact that the concurrence

accorded to the Ad-hoc appointment of Subh Chandra Jha was withdrawn on 12.7.1985 purges the B.P.S.C. and its Chairman of contempt, but is immaterial for Mr. Birkeshwar Prasad Singh. I am, therefore, clearly of the view that Birkeshwar Prasad Singh is guilty of contempt of this Court. He has also tendered unqualified apology for the action taken by him. But I am not satisfied that he has purged himself of the contempt of this Court because in paragraph 2 of his show cause he has justified his action by saying that he had acted in a bona-fide manner.

19. Sanjeevan Sharma in his note dated 17.4.1985 recommended that the commission may concur in the Ad-hoc appointment of Subh Chandra Jha from 18.10.1983 and that such step would not amount to contempt of this Court. I cannot imagine a more blatant case of contempt of Court. In his note he wrote falsely that Subh Chandra Jha had been appointed from 18.10.1983. The affidavits of Subh Chandra Jha and all the officers of the Irrigation Department are that Subh Chandra Jha had not been appointed by any specific order since 18.10.1983 and yet Sanjeevan Sharma wrote that the appointment of Subh Chandra Jha since 18.10.1983 may be concurred with. Clearly the advice of Sanjeevan Sharma was against the order of this Court. I, therefore, hold that Sanjeevan Sharma is guilty of committing contempt of this Court.

20. Lastly, I come to the case of Subh Chandra Jha. He is the king pin of the whole drama. Every body acted for his benefit. He was not such a person in whom the entire Secretariat and the Public Service Commission Would have been so much interested. It is obvious that he must have applied political clout for this purpose. The personality of that clout has not been brought on record, but it is obvious that Subh Chandra Jha was responsible for some of the officers of the Government and the B.P.S.C. disregarding the order of this Court. He must, therefore, be held guilty of abetting the contempt of this Court.

21. It is necessary to consider the submission urged by learned Advocate General on behalf of the officers of the State and the Public Service Commission. The general submission was, that notings on the files expressing opinion of the officers aid not amount to contempt of Court. If was submitted that the notings did not represent the concluded decision of the Government and therefore, the officers were not liable for contempt of Court. The proposition advanced by learned Advocate General is rather too wide. A Government file is not an individual's private property. It is public property. The opinions expressed therein are liable to reduce the credibility and the binding nature of the orders passed by the High Court, and that would amounts to denigration of the State Judiciary. No officer has the right to abuse the High Court or to ignore the orders passed by the High Court. I do not for a moment contend that for every noting in the file contrary to the view taken by the High Court will amount to contempt of Court. It will depend upon the nature of the view noted is the file and whether the notings are intended to set the High Court's order at nought maliciously. In the present ease, the order of the High Court was explicit. The Advocate General had advised

explicitly that taking any steps to appoint Subh Chandra Jha Ad-hoc would amount to contempt of Court and yet the officers were busy trying to find out how to ignore the High Court order. When the High Court's direction was to make the regular appointment through the B.P.S.C. where was the occasion for seeking concurrence of Ad-hoc appointment of Subh Chandra Jha. The whole file gives the impression that the officers in the State were not reconciled to the orders passed by the High Court. I am, therefore, unable to hold that some of the officers were not liable for contempt of Court.

22. At places the Government file shows that Subh Chandra Jha had been retained to discharge the duties of P.R.O. although no written order had been passed to that effect after 18.10.1983. Was this not an attempt by Subh Chandra Jha and the bureaucracy in the secretariat to ignore the order of the High Court ?. Seeing in this light Subh Chandra Jha cannot be absolved for having continued as P.R.O. till the issuance of the rule by this Court, Whether he will be entitled to salary for that period or not is a different question with which I am not concerned, but it shows clearly a collusion between Subh Chandra Jha and some officers of the Secretariat. All those who were aware of the High Court order and took steps for Ad-hoc appointment of Subh Chandra Jha after 17.10.1983 must be held to be guilty to contempt of this Court to disregard the order of this Court dated 4.5.1983 in C.W.J.C. No. 1534 of 1983. To sum up, contempt of this Court has been committed by Shrideo Mishra, Legal Remembrancer, Mrs. Radha Singh, I.A.S., then working as Additional Commissioner, Irrigation Department and now working as Additional Finance Commissioner, Dr. Birkeshwar Prasad Singh, Sanjeevan Sharma and Subh Chandra Jha and I convict them accordingly In regard to sentence, I am clearly of the view that there was motivation for it. The hand of the moving spirit has, however, remained concealed. It appears that the feeling amongst high officers of this State is that the High Court will not punish them for contempt of the High Court, as they are high officers and that all that the High Court will do in case of contempt of Court is to give lectures and at times rant at them. To remove this misconception it is essential to impose upon them a fine of Rs. 50/ (Rupees fifty) each on all the five persons mentioned above, in default to suffer simple imprisonment for two weeks. The rule issued against J.C. Kundra, A.K.M. Hassan A.U. Sharma and Arjun Prasad is discharged

Nazir Ahmad, J.

I agree.