
(2001) 02 PAT CK 0056
In the Patna High Court
Case No : CWJC No. 600 of 2001

Krishna Chandra Prasad Singh, M.L.A.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 Patna 159

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashannk Kr. Singh, J

Bench : Division Bench

Judgement

Ravi S. Dhavan, C.J.—Cases as the present one relate to the state of affairs on which the media has reported from time to time and the Government of India has also expressed concern that the Government of Bihar is not utilising the grants, which have been allocated nor is generating grants for planning.

2. It is already on record that allocations which would normally come to local bodies have not been made and Bihar has lost out on receiving grants from the Government of India. The Government of India has made it clear to the Government of Bihar, in no uncertain terms, that unless grass root democracy is restored and local bodies are made functional. Bihar will not be given funds as grants meant for local bodies. The report of the Government of India, Planning Commission, needs to be seen. This report already lies on record in a matter at the High Court.

3. Approximately Rs. 500 crores have already been lost as funding not received between 1995-2000 as was meant for local self-Government plan schemes. A caution has already been given by the Government of India that unless grass root democracy is restored Bihar will not get allocation for the period 2000-2005. This in itself is a dangerous situation that Bihar must lose out on its grants which could be made available but will not as total Parliamentary democracy was or is being kept out for one reason or the other.

4. The utilisation of the grants by local bodies can only be for subject heads detailed in the Eleventh and Twelfth Schedule of the Constitution of India. The Eleventh Schedule is for rural areas to be administered by Panchayats and the Twelfth Schedule is for urban areas to be administered by the district boards, municipalities and City Corporations. Twenty-nine items are listed in the Eleventh Schedule and eighteen items are listed in the Twelfth Schedule.

5. The Court already has other cases pending where grants have lapsed and incorrect reports have been filed by the district officials declaring otherwise. But, when notices were issued to the Secretaries of the ministry of the concerned, it was acknowledged that no scheme worth the name has been executed; these are instances of primary health centres. In between, what was given to the Court as a report by the district officials there was a total contradiction, by the Secretary to the Government. This was also a case of public funds of grants either not used or misutilised. All this is on record of CWJC No. 4524 of 1999.

6. The present is a case, which is based on a report, on record and referred to in the petition. An extract from the 10th Finance Commission Report (1995-2000) December, 1994 on page 41, re. Bihar (the other references are of other States) records :

^ ^fcgkj yach vof/k rd yk[kks gsDVs;j d`f"kZ Hkwfe dk ok<+ esa Mwcuk fcgkj ds fuuk"k dk fo"ks"k dkj.k gSA nks ,sls {ks= esa Vky vkSj fn;kjk Hkwfe "kkfey gSA bl nks cM+s {ks=ksa ds lca/k esa jkT; ljdkj ds izLrkoksa dks Lohdkj djrs gq, ge Vky Hkwfe ds fodkl ds fy, 3 djksM+ :i;s vkSj fn;kjk Hkwfe ds fodkl ds fy, 21 djksM+ :i;s dh flQkfj"k dj jgs gSaA bl ds vfrfjDr ge lñ vkSj mi&eaMyh; vLirkyksa esa iznku fd, tkus okys ,DI&js l;a=ksa vkSj funkukRed miLdjksa dh [kjhn ds fy, 5-50 djksM+ :i;s dh Hkh flQkfj"k dj jgs gSA bl izdkj fcgkj dh dqy fo"ks"k leL;kvksa dk ;ku j[kus ds fy, dqy 57-50 djksM+ :i;s dh flQkfj"k dh tk jgh gSA

7. Thus the petitioner states in paragraphs 18 and 19 :

"18. That, as said earlier, the said allocation of fund was made for the said specific purpose of development of "Tal" and "Diara" areas and the same was to be utilised during the plan year 1995-2000. The plan year is to end on 31st of March, 2001. But till now no step has been taken by the State Govt. to utilise the said amount, or even part of it, for the purpose it was allocated."

"19. That, since the State Govt. has not sent, so far utilisation report with regard to the said allocation, no further amount has been recommended for the purpose in the Eleventh Finance Commission Report and no consequential allocation has been made by the Central Govt. accordingly."

8. When this matter was presented before the Court on 15 January, 2000 the Court considered it appropriate to give an opportunity to the State of Bihar to let the Court know on what exactly has happened to the allocation, which was made as is referred to in the 10th Finance Commission Report. The Court was concerned that this repeating phenomena of Bihar loosing out on grant

allocations because of non-utilisation must come to a halt. If it is to be believed that State finances are depleted, then the Government of Bihar already stands cautioned that if it fails to utilise the grants it is unlikely that funding will be made available in future. Thus, the Court has noticed with concern in several cases that grants are not being utilised, budget allocations are not being processed, grant allocations are not being received and consequentially public plans are being abandoned. In this regard several matters are pending as public interest litigations (PIL).

9. In this case nothing concrete has been reported to the Court on what exactly will happen to the Rs. 57.50 crores which was allocated to the State of Bihar. Suffice it to say that at present orally it has been indicated to the State Counsel. A.A.G.S., by relevant quarters as he mentions, that the funds have not been unutilised.

10. Today is the 7 February, 2001 already. In the next seven weeks the financial year will come to close and the apprehensions are that any allocations which had been recommended by the Finance Commission the chapter will close for Bihar and at present nothing has been indicated to the Court that projects like the present one may also become a matter of lapsed grants. If this happens, then the State of Bihar has received signals for lesser allocations for 2000-2005. This will be a very serious situation.

11. Further, the present petition is by a Sitting Member of the Legislative Assembly, the petitioners petition the Court to show that there are no takers for concern in matters relating to utilisation of grants for public projects.

12. At present the Court is not concerned as to which project is to be taken up first or executed or completed. Presently, the question is of an impending situation of lapsed grants because of non-utilisation with all the risks of funds not being allocated for the next plan. There is a danger of projects being abandoned. This should not happen. As the period of adjournment was taken lightly by the State respondents in not showing concern to grants which may lapse at the end of the financial year, leaves the Court with no option but to spell out its concern.

13. Thus, it would be appropriate that the fund allocations as are referred to in the recommendations of the 10th Finance Commission at Page 41 being a sum of Rs. 31 crores, Rs. 21 crores. Rs. 5.50 crores amounting to Rs. 57.50 crores, be deposited in a separate account with the Reserve Bank of India, Patna in the head under which it was allocated. Hereinafter, it will be entirely up to the State of Bihar to make out a plan allocation for the utilisation of these grants and, further, to ensure an exercise within public finance fiscal discipline for appropriation of grants into the next financial year, and a request to the Government of India that the public funding in reference to the subject of the grant may not be lost and be made available to the State of Bihar for the next plan allocation also.

14. In the circumstances, let this amount be deposited as suggested by the

Court and, thereafter (a) the Government of Bihar may make out a plan allocation for the utilisation of grant, (b) request the Government of India for appropriation of the grant and (c) a further request for funding under the same heading for the next plan period.

15. The Court cannot ignore the situation that the people of Bihar will lose their funding because somewhere within the Government does not have the time for priorities for utilisation of grants for public projects.

16. At the request of learned Additional Advocate General III the Court will have this matter next after two weeks.

17. The Court now is requiring Registrar General of the Court that all these public interest litigations which relate to complaints on non-utilisation of grants, lapse of grants or the apprehension of losing grants be made as one group and placed before the Court.

18. As this is a matter which will effect the people of Bihar in public planning for public projects the Court considers it appropriate that these cases may be examined by a committee for the assistance of the Court. The committee should be such that the State of Bihar and the Government of India are represented and at present the Court is requiring counsel for the petitioner to join the committee. Let the committee be constituted of the Advocate General, Bihar, Senior Standing Counsel, Central Government and counsel for the petitioner (Mr. Jayanandan Singh, Advocate).

19. Let the group of cases as identified be placed before the Court immediately after two weeks on 22 February, 2001 in the supplementary list.