

(1998) 09 PAT CK 0042

In the Patna High Court

Case No : Miscellaneous Judicial Case No"s. 668 and 804 of 1993

L. Angad Kumar and Another

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Citation : (1999) 47 BLJR 167 : (1999) CriLJ 1506 : (1998) 3 PLJR 454

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Tara Kant Jha and Kaushal Kumar Jha, for the Appellant; P.K. Verma and Lakshmi Kant Tiwary, for the Respondent

Judgement

M.Y. Eqbal, J.—Petitioners of these two contempt petitions have moved this Court for initiation of a contempt proceedings against the opposite parties for the alleged disobedience of the order dated 21-10-1992 passed by C.W.J.C. No. 5367 of 1992 and the order dated 21-10-1992 passed in C.W.J.C. No. 4920 of 1992.

2. It appears that the petitioners had filed the Writ applications seeking issuance of appropriate writ commanding upon the respondents-opposite parties to relax their services by way of absorption on the post of conductors or traffic clerk or any other equivalent post in the Bihar State Road Transport Corporation {for short "the Corporation") taking into account that they have been working as casual employees in the Corporation for the last so many years. C.W.J.C. No. 5367 of 1992 was disposed of in terms of the order passed in a similar writ application bearing C.W.J.C. No. 4020 of 1992. In both the writ applications the contentions of the learned counsel appearing on behalf of the Corporation was that pursuant to the direction of the Supreme Court scheme was prepared by the Bihar State Road Transport Corporation for regularisation of the services of the casual employees of the Corporation, like the petitioners and it is accepted that no sooner the turn of the petitioners comes they shall be appointed after relaxing age etc. On the basis of the statement of the Corporation the writ petitions were disposed of with a direction to the respondent-Corporation that the petitioners

be, accordingly, absorbed relaxing the rules etc. keeping in mind the date since they have been working.

3. The respondent-Corporation opposite party No. 1 filed show cause add stated inter alia that in view of the order of the Supreme Court as also the agreement between the employees union of the Corporation, the services of 1063 casual work- men have been regularised as per the availability of vacancy in various categories. It is further stated that out of the list of total 1614, the total number of casual conductors comes to about 925 among which the serial number of the petitioners stands at number 391. It is further stated that the Corporation requested the Government for creation of 725 posts for accommodating casual conductors whose numbers were maximum to be regularised. This show cause was filed on 8-9-1993. In supplementary show cause filed by the Corporation on 3-1-1994 it was stated that in the matter of appointment or creation of posts the Corporation is bound by the direction of the State Government and the Government has put complete ban on the creation of new posts. It is further stated that out of 1600 casual employees about 1000 have been regularised as and when the vacancies became available due to retirement in the various cadres in which the casual employees were working. It was further stated that besides 634 casual employees there are also 638 dependents who are Waiting for appointment on compassionate grounds. In the supplementary affidavit filed by the Corporation it was further stated that out of 1600 casual employees, about one thousand have been regularised as and when vacancies became available due to retirement or otherwise in the various cadre in which casual employees were working. It was further stated that cases of the petitioners for regularisation in service shall be considered as and when vacancies become due. Lastly it was stated that there is no disobedience or disregard of the direction of this Court which the Corporation has complied with.

4. I have heard Mr. Tara Kant Jha, learned senior counsel appearing on behalf of the petitioners and Mr. P. K. Verma, learned counsel for the Corporation.

5. Mr. P. K. Verma, learned counsel appearing for the Corporation during course of arguments brought to my notice different orders passed by the Supreme Court in Civil Appeal No. 7290 of 1994. This Court is also aware about the various orders passed by this Court in a number of cases when the employees of the Corporation brought to the notice of this Court about the nonpayment of salary to the employees of the Corporation for several years. A Division Bench of this Court holding that the Corporation cannot be viably managed passed an order for constituting a committee and the matter ultimately went before the Supreme Court in the aforesaid appeal filed by the State of Bihar. In the said appeal by the order of the Supreme Court a committee was constituted for making assessment of the liabilities of the Corporation and suggest ways how the said liabilities can be discharged effectively. The said Committee submitted its recommendation suggesting ways and means for the survival of the Corporation. The State Government then by filing affidavit accepted the report of the Committee and

further undertook to implement the scheme/package prepared by the Committee.

6. Mr. Verma, learned counsel placed before me a copy of the scheme/package prepared by the Committee and accepted by the State Government. From perusal of the scheme/package it appears that the Committee gave various recommendations which the State Government is bound to implement it. Some of the clauses of the Committee report which are relevant for this case are quoted below :-

Clause 6.5 : - The Corporation should retrench/remove surplus staff after retaining the number required on 800 on road buses as per our recommendation in paras 4.12, 4.15 and 4.16. The State Govt. may consider providing the required amount as a grant to the Corporation. This process may be completed in a phased manner as has been illustrated in the following paragraphs:

Clause 6.7 : - The Committee also recommends that the State Government may give a direction u/s 34 of the Act to the Corporation that all salaries and other allowances of its staff shall remain frozen for 5 years after which the position will be reviewed. If the situation so warrants the 5 years freeze period may be further extended. If there is shortfall in payment of salaries even then the Corporation may consider resorting to wage cuts.

Clause 6.8: - The Committee is of the view that till the rehabilitation package is worked out the Board of Corporation may be superseded and it should be managed by an Administrator for at least 5 years after which the situation will be reviewed.

Clause 6.9 :-If the programme for rehabilitation involved any recruitment of specialised category of staff then the department of Government and its other public sector undertakings/ Boards etc. will be first consulted. Only when it fails fresh recruitment may be made after obtaining approval of the State Government.

7. From perusal of the entire report of the Committee it is evident that the Corporation has totally collapsed for so many reasons including appointment of surplus employees and acute financial crisis. Now for the rehabilitation and viability of the Corporation maximum number of employees shall have to be retrenched from service as per recommendation of the Committee. In such circumstances, question arises whether the opposite parties are in a position to comply the orders and directions of this Court for regularisation of services of the casual employees for which contempt petitions have been filed. After the said scheme was prepared by the Committee as per order of the Supreme Court and approved by the State Government it would not be proper to insist the Corporation for the compliance of the orders and direction when the services of the regular employees of the Corporation are at stake. From the show cause of the Corporation and the submission made by the learned counsel it appears that the opposite parties are expressing their genuine difficulties with regard to the implementation of the orders and directions.

8. It is well settled that law of contempt is based on sound public policy by punishing any conduct which shakes the public confidence in the administration of justice. When the order or direction become impossible to be implemented and if it appears that there are insuperable difficulties in implementing the order, then the contemnor cannot be held liable for contempt. In the case of Mohd. Iqbal Khanday Vs. Abdul Majid Rather, , the Supreme Court observed (at page 2254 of AIR):

From the above it appears that the appellant was expressing his genuine difficulties with regard to the implementation of the order dated 21-9-1992. In such a situation the insistence of the Courts on implementation may not square with realities of the situation and the practicability of implementation of the Court's direction. In our considered view, hooking a party to contempt proceedings and enforcing obedience to such orders hardly lends credence to judicial process and authority; more so, in the peculiar facts and circumstances of the case. The Court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance at the instance of the person proceeding against for contempt. Practically, what the Court by means of the contempt proceeding seeks is an execution which cannot meet with our approval.

9. As noticed above, the business of the Bihar State Road Transport Corporation collapsed on account of various reasons including appointment of large number of casual employees, mismanagement of the affairs of the Corporation and also incurring heavy loss, resulting acute financial crisis. Now the Hon''ble Supreme Court has directed the State Government to implement the scheme referred to herein above. At this juncture if this Court insists the State of Bihar or the Corporation to comply for regularisation of services of the casual employees, it will amount to frustrating the scheme prepared by the Committee. In the background of the case and the subsequent development it is not possible for the opposite parties to comply the order.

10. Having regard to the facts and circumstances of the case discussed hereinabove and the nature of the order passed in the writ petitions, I am of the opinion that unqualified apology tendered by the opposite parties should be accepted and these contempt proceedings should be dropped.