
(1993) 07 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 61 of 1993

Magister Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1993) 2 BLJR 1418 : (1993) 2 PLJR 494

Hon'ble Judges : S.B. Sinha, J; R.N. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sinha and R.N. Prasad, JJ.—The petitioner in this application has sought for issuance of a writ of mandamus upon respondents 2 and 3 to enlist them in the category of Class I A Contractor of Rural Engineering Organisation.

2. The petitioner is registered Class I A Contractor of Road Construction Department having registration No. Class I A/328-A of 1988. The contention of the petitioner is that he has executed several road projects working in the department and consisting of Road Construction Department and National Highway including Rural Engineering Organisation. Originally, there was only one department which was bifurcated into two wings, namely, Building and Road Construction Wings. Even upon bifurcation, the Contractors who were originally registered with Public Works Department were being treated registered for both the wings namely Road and Building. The Road Construction Department again was bifurcated in two wings Road Construction Department and Rural Engineering department in the year 1990. The District and Village roads and other developmental works have been assigned to the Rural Engineering Organisation where roads connecting the District have been put under the control of the Road Construction Department. However, by reason of a notification dated 7-1-1991 which is contained in Annexure-2 to the writ application, it has been directed that the Contractors should get themselves

registered with the Rural Engineering department although they were previously registered under the Road Construction Department.

3. The petitioners have also relied upon an order dated 24-4-1992 passed in CWJC No. 6256 of 1991 which is contained in Annexure 3 to the writ application.

4. In this case, a counter-affidavit has been filed on behalf of respondents 1 and 3 wherein it has been contended that in the year 1970, the Bihar Establishment of Contractors Rules was framed and notified on 19th June, 1970 in terms whereof different categories of contractors got themselves registered in the Public Works Department, Similar rule was framed in the year 1981 by the Rural Engineering Department by memo No. 9686, dated 9-11-1981 a copy thereof is contained in Annexure-B to the counter affidavit. In that rule it was provided that those Contractors who were already enlisted need not get themselves registered again in the Organisation afresh. However, it has been submitted that Rural Engineering Organisation has been a wing of Rural Development Department since the very inception except from short period i. e. from 1982 to 1986. In the counter-affidavit, it has been stated as follows:

It is relevant to state here that the Organisation was facing difficulty in taking work from the contractors registered with the Road Construction Department because to Organisation had no control over such contractors as some of such Contractors had/have been in habit of making inordinate delay in execution of work, doing inferior quality of the work, leaving the work incomplete, receiving payment by coercion and intimidation.

It is relevant to state here that in order to take action against such unscrupulous contractors the Organisation had to depend on Road Construction Department because the organisation had only to report the Road Construction Department to take action against such contractors and some times in absence of any action taken by the Road Construction Department against such Contractors, the work of Organisation was hampering and the Organisation was completely helpless and had to bear heavy loss. It is relevant here to state that as stated in the earlier paragraphs, keeping these difficulties in view and also considering the agreement executed with the World Bank for the construction of Rural Road, it was felt that the Rural Engineering Department would not be able to exercise effective control over the contractors engaged in executing important works of the World Bank if they would not be registered with the Organisation and in that view of the matter, the Bihar Contractors Registration Rules, 1981 contained in Annexure-B to the counter-affidavit was amended by a notification dated 7th of January, 1991, contained in Annexure-2 to the writ petition.

5. It has been submitted that in view of the difficulties faced by the Rural Engineering Organisation, a notification dated 7.1.1991 was issued as a result whereof all the contrators have been brought under the purview of the said 1981 Rules.

6. In paragraph 16 of the counter-affidavit, the respondents have also stated

thus:

It is most respectfully submitted that the aforesaid difficulties were experienced since 1981 and in many cases the contractors of the aforesaid categories had not completed the work in the time and left some works incomplete and some contractors completed the works with inferior quality although several such difficulties were faced by the Organisation and one of the examples is given here-under, that is, in 1986 an agreement was executed for the construction of a wooden bridge on estimated cost of Rs, 5, 29, 000 in the Organisation Division, Kishanganj and the work had to be completed within a period of six months. But the aforesaid Contractors stopped the work after taking excess payment for the work done and despite repeated reminders and assurance from the contractors he did not complete the work till 199 and as a result thereof, the Government has to suffer a financial loss apart from the hardship and inconvenience to the local people and taking that view the Government took a decision to amend the Rule by Annexure-2 to the writ petition making compulsory to all the Contractors to get themselves registered in the Organisation if they so desire to work under the Organisation.

7. With regard to the order passed in C. W. J. C. No. 6256 of 1991, it stated that when the matter was heard on 24th April, 1992, the actual facts could not be placed by Junior counsel of the then Additional Advocate General and in a subsequent writ application being 6438 of 1992, a Bench of this Court by an order dated 5-2-1993 dismissed a similar writ application. The parties thus have not disputed the basic facts which have been noticed hereinbefore. The rules framed by the State are not statutory rules. They are merely executive instructions issued by the State of Bihar for the purpose of functioning of the various Organisations. The State of Bihar, admittedly, framed 1970 Rules for the entire public works department but separate rules were framed only for the Rural Engineering Organisation which is contained in Annexure-B to the counter-affidavit (hereinafter referred to as 1981 Rules). Rule 3(2) of the aforementioned rules reads thus:

Bihar Thikedar Suchikaran Niyamawali, 1970 ke Adhin Lok Nirman Bighag (Sarak Aur Bhawan) mein shrenil (Ka) va 11 (Kha) (Gazette Dekhen). Thikedar ke rup mein suchibadh thikedar on ko gram abhlyantran sangathan ke adhin nirman karya ke nispadan ke liye (7) Niyamawali ke adhin suchibadh hona awashyak nahin hat. Lok Nirman Bighag ke alse suchibadh thikedaron ko gram abhiyantran sangathan nirman karya ke liye bhi suchibadh mane Jayenge. Parantu gamin Abhiyantran sangathan mein praka an ke liye agrim ki rashi jama karna hoga.

8. 1981 Rules have been made by reason of the notification dated 7-1-1991 whereby in place of old Rule 3 a new rule has been substituted which reads as follows:

Niyam 3-III ke sthan par nimnlikhU pratisthapit kiya jayega. Bihar Thikedar Suchikaran Niyamawali 1970 ke adhin Lok Nirman Bighag Sarak awam Bhawan

Shreni 1 Ka) awam shreni i (Kha) uchcha shreni thekedar ke rup main suchibadh thikedaron ko gramya abhiyantran sangathan ke adhin nirman karya mein nispadan ke liye is nivamawali ke adhin suchibadh hona awashyak hai.

The petitioners have no questioned the jurisdiction of the respondent State to frame Rules.

9. If the State had jurisdiction to frame rules, it has also the jurisdiction to amend the same. Mr. Singh, learned Counsel appearing on behalf of the petitioner, however, submitted that the said amended rules are prospective in nature and thus cannot govern the cases of other contractors who were already registered with the road construction department. He further submitted that the decision of a Division Bench of this Court in C.W.J.C. No. 6256 of 1991 is binding upon this Court. However, from a perusal of the aforementioned order dated 24-4-1992, it appears that the said order was passed on the basis of the statement made by Junior Counsel to learned Additional Advocate General No. 2 and not upon taking into consideration of facts and circumstances of the case and the legal aspect of the matter. The said decision, therefore, must be held to have been passed sub-silentio and thus cannot create any binding precedent. However, C. W. J. C. No. 6438 of 1992 upon which reliance has been pleased by the respondents has also been dismissed by an order dated 5-2-1993 in limini. This decision is also therefore, of no assistance to the respondents.

10. Our attention has, however, been drawn to an order dated 28-4-1993 passed in C. W. J. C. No. 13218 of 1992, North-Bihar Construction Corporation v. The State of Bihar and Ors. wherein, it has been held as follows:

After hearing the parties and going through the record we are of the view that the notification dated 7-1-1991 as contained in Annexure-2 cannot be said to be arbitrary or illegal for the reason that Bihar Enlistment of Contractor Rule, 1981 has been amended by the aforesaid notification requiring the Contractors who intend to take contract works in Rural Engineering Organisation to get themselves registered under Bihar Thikedar Suchikaran (Amendment) Niamyawali. 1990. The reason for bringing the aforesaid amendment in the rule is reasonable one and the petitioner cannot insist that they should be allowed to take contract work on the basis of the registration in other departments i. e. P.W. D. Road/Building Construction Department. Similar matter bearing C. W. J. C. No. 6438 of 1992 has been dismissed by this Court.

In this result, we do not find any merit in this application and the same is dismissed.

11. We are in agreement with the aforementioned view. However, as indicated hereinbefore, the power of the State Government to amend the 1981 Rules cannot be questioned and in fact has not been questioned by the respondents. The 1981 Rules are in vogue for about 12 years. It is only by reason of Rule 3 thereof that the Contractors who were enlisted with the Road Construction Department were not required to get themselves" registered with the Rural

Engineering Organisation. It is, therefore, within the domain of the State to withdraw the concession given to the enlisted Contractors and ask them to be registered with the Rural Engineering Organisation also.

12. The State has fairly stated in the counter-affidavit that except for a period 1981 to 1986 the Rural Engineering Organisation was a part of Rural Development Department. The Rural Engineering Organisation is not concerned with only the construction of the roads in Rural area but also concerned with other developmental schemes. The State has also stated in the counter affidavit that the project is being financed by the World Bank, As indicated hereinbefore, it has clearly been stated by the respondents in the counter affidavit the reasons which necessiated the amendnient in 1981 Rules.

13. As indicated hereinbefore, the Rules in question are not a statutory ones. They merely reflect a policy decision of the State. The State must be held to be the sole authority to determine as to what policy decision is required to be adopted by it for implementation of the own Scheme, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot interfere with the such administrative orders unless it is found to be wholly arbitrary and violative of Article 14 of the Constitution of India. Recently, the Supreme Court of India, in J. Chandrasekhara Rao Vs. V. Jagapathi Rao and Others, held as follows:

The obligation to act fairly on the part of the administrative authorities was envolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a wai1/ judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A. K. Kraipak v. Union of India. Even so the extent of judicial secrutiny/judicial review in the case of administrative action cannot be" larger than in the case of quasi" judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities ; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is a room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in Secretary of State for Education and Science v. Metropolitan Borough Counsel of Tameside). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation:

It is true the discretion must be exercised reasonably. Now what does that mean
7 Lawyers familiar with the phraseology commonly used in relation to exercise of

statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the power of the authority.

14. As the instant case, it has not been contended by the petitioner that the Amendment Rule 3 is an unreasonable one, not we find the same to be unreasonable for the reasons stated hereinbefore.

15. So far the contention raised by learned Counsel for the petitioner to the effect that the Rules are prospective in nature, there cannot be any doubt that the same is so. However, getting oneself registered with a particular Organisation, for undertaking contract job is a matter of procedure and therefore, no vested right is taken away from a citizen. The said Rules also operate prospectively in the sense that only upon coming into force thereof the Contractors are required to get themselves registered, with the Rural Engineering Organisation also for undertaking contract job therewith.

16. A Division Bench of this Court by an order dated 24-4-1992 in C. W. J. C. No, 6256 of 1991 Ram Jivan Prasad and Ors. v. The State of Bihar and Ors. held as follows:

The grievance of the petitioners is that they are not being allowed to participate in submitting tenders in the Rural Development on the ground that they have not got themselves registered separately in the department. They assert that they were registered contractors in the Public Works Department which subsequently split into Road Construction Department, Building Construction Department, Rural Engineering Organisation and National Highway and thus they need not be registered afresh in the 3rd Department aforementioned, namely, Rural Engineering Organisation.

Learned J. C. to A. A. G. I. frankly stated that in view of the fact aforementioned, it is not necessary for the petitioners to get themselves registered afresh. He further states that this stand of his is apparently supported by a letter as contained in Annexure-3 to C. W. J. C. No. 552 of 19W.

Having heard Mr. Tiwary, learned Counsel for the petitioner and learned J. C. to A. A. G. I., we find substance in the contention of the petitioners and accordingly we allow this writ application with a direction that they be allowed to participate while submitting their tenders in the department concerned.

It further appears that before the said Bench neither any counter affidavit had

been tiled nor the legal aspects involved in the matter were brought to the notice of the Bench. It is now well settled a decision cannot be held to be binding on a point which was not canvassed before it.

Reference in this connection may be made to a Pull Bench Decision in Mohd. Jainul Ansari and Others Vs. Mohd. Khalil, and in Mohd. Nazimuddin and Another and Mohd. Idris and Others Vs. State of Bihar and Others, wherein the Full Bench of this Court has followed the decision of the Supreme Court in Goodyear Ltd. v. State of Haryana (1990) 2 SCC 91

17. In this view of the matter, the order passed in C. W. J. C. No. 6256 of 1991, in our opinion does not create any binding precedent.

18. For the reasons aforementioned, there is no merit in this application. This application is accordingly dismissed, but in the facts and circumstances of the case, there will be no orders as to costs.