
(2003) 11 PAT CK 0091
In the Patna High Court
Case No : L.P.A. No. 733 of 2002

Mamta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (2004) 2 PLJR 113

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

Bench : Division Bench

Advocate : Kamal Kishore Mishra and Shashank Shekhar, in CWJC No. 1740 of 2003, for the Appellant; A.N. Singh, for State, A.K. Srivastava, IAS, Director, Social Welfare and G.S. Kang, I.A.S. Secretary Welfare, for the Respondent

Judgement

1. An affidavit has been filed today by the Director, Social Welfare Department, Government of Bihar, Patna. The affidavit speaks of positioning only nine Judicial Magistrates under the Juvenile Justice (Care and Protection of Children) Act, 2000. Whether the Judicial Magistrate or the Board, they compliment each other. It is not the case of anybody nor the satisfaction of the State administration itself that any district Judgeship is without juvenile in conflict with the law.

2. Not to work an Act of Parliament or not implement it is, in effect, breakdown of the Constitutional obligation to implement legislation. This should be an embarrassment to the Government of Bihar. The issue is not of this particular enactment, there are several others when again even implementation of legislation has been shelved by executive fiat. When the necessity arises the Court will express it's views and give examples.

3. With a State Counsel present, who was doing a reasonably good job to his brief, the Secretary desired to address the Court over him. The Secretary sought permission to address the Court.

4. The Secretary mentioned, that at present he has a sanction of nine Judicial

Magistrates and also mentioned that he may not be able to get a commitment for placing Judicial Magistrates in the 38 District Judgeships. He submitted that if he ventures to seek placement of Magistrates in every District Judgeship, then there is likelihood that even the sanction of the nine will get caught in a bureaucratic wrangle.

5. The Court wonders how does one work the public justice system and social, justice programmes having the sanction of an Act of Parliament. Exploitation of children and keeping the child away from criminals and criminality is the object of the Act following the Constitution, Article 39(f).

6. At present the matter is not of issue but an ideal situation that if the juvenile and a child criminal is to be dealt with, each District Judgeship must have a Judicial Magistrate. Whichever way this issue may be speeded up whether as a part of the proceeding or otherwise, the Court will be open for such an exercise. What is of paramount importance is that the Juvenile Justice Act (Care and Protection of Children) Act, 2000 speaks of an ideal. But, the Act does not leave it at that. The Constitution wants it's implementation. In Bihar even the planned machinery has not been set up beginning with particularly the Judicial Magistrate and the Juvenile "Justice Board. While the Secretary will take up the matter at his end, the Registrar General will also take up the matter with the Government for the implementation of the Act as a whole in every District Judgeship.

7. A copy of this order be sent to the (a) Chief Minister, (b) The Governor and (c) The National Human Rights Commission.

8. Put up after fortnight under the same heading.