

**(2000) 11 PAT CK 0007**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 8765 of 1998**

Nand Kishore Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

**Date of Decision :** 01-11-2000

**Acts Referred:**

Constitution of India, 1950 — Article 171, 174, 189, 243E, 243U

**Citation :** (2000) 4 PLJR 819

**Hon'ble Judges :** Ravi S. Dhavan, C.J.;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** Nand Kishore Sing in person, for the Appellant; S.A. Narain, R.K. Dutta for State and M/s. Ajay Kumar Tripathy Chakardhari S. Singh for Union of India, for the Respondent

## Judgement

Ravi S. Dhavan, C.J.—The Court gets an occasion to speak out only when there is a cause before it. Judicial discipline demands silence, except when deciding a case. There are times when there are political upheavals and the Courts of the nation may have to remain spectators only. The Constitutions of nations are overhauled, yet the judiciary must keep quiet. Nations may move from democracy to dictatorship, while the judiciary watches the situation with pain, if it has love for democracy, and yet cannot express itself when this somersault takes place. These matters before the Court, however, are about grass root democracy not having functioned in State of Bihar for one whole generation, giving the Court cause to comment. A State affidavit filed the day before yesterday acknowledges as an official declaration that grass root democracy in Bihar has been absent for 22 years. Normally, politicians in power rarely acknowledge that they function without full democracy, even if democracy does not function while politics thrive. This acknowledgement by the State is also acceptance of a situation that for more than two decades a generation has grown up without even knowing what grass root democracy is about.

2. The record of the State needs to be corrected. It is not 22 years, but 30 years,

since the people of Bihar started losing the institution of local self government and democracy at the people's level. Wiping out local self government began when the first of the Ordinances was issued in 1970, making a beginning of slowly removing the keystone of the arch on which democracy depends. The politician and the bureaucrat joined in taking away this freedom from the people of Bihar.

3. For the last five years the people of Bihar were mesmerised into believing a falsehood that the Courts, the High Court and the Supreme Court, were responsible for not permitting the holding of elections to bring in local self government, so that grass root democracy can function. The unfortunate part is that the people believed this story. It was a difficult job to make the State record surface. When the records did surface before this Court it was found that the Courts had never prevented anyone in power in Bihar from holding the elections that would re-establish grass root democracy. This Court certified that there is no stay order of the Supreme Court. By August of this year the Supreme Court also clarified that it had never passed any stay order preventing the powers which rule Bihar from holding elections of local bodies. But, the game was not abandoned. Now the Directorate of Census was brought in to tell the High Court that the statistics of Census is very important and there is a Constitutional obligation to hold a Census the first year after every decade and as the year 2000 passes into 2001, the counting of the people of Bihar will also begin. That this is a time consuming job and it will not end until the first quarter of next year. Therefore the High Court was being informed that the Central Government has laid down that the Census must be completed first, and the elections will be held after the Census figures are available, as these logically effect the constituencies and the representation of people in the legislature and Parliament. The Government of Bihar joined the Directorate of Census in claiming that elections to return local self government will have to wait until the Census operations are over. The Court was also being told that on a certain fixed date everything will come to a halt when heads are being counted for Census 2001. The Court had been told emphatically by the Directorate of Census, Government of India, through its standing counsel, that everything else will have to wait until the Census is over.

4. The basic question, is whether the Constitution of India permits this story to be accepted. All this must be fortified by the Constitution of India. An answer from any other quarter, is irrelevant. Nothing was shown to the Court on what was being indicated.

5. Holding a census every decade is routine. But in so far as elections are concerned, the Constitution of India itself explains that until the relevant figures for the first census taken after the year 2000 have been published, it should be construed that the reference would be to the 1971 census. The submission of the Directorate of Census that local self government elections should be delayed does not inspire confidence. The Constitution does not delay elections on this

score. In fact, the Constitution says to take into account the relevant figures of the previous census.

6. Clearly, when for three decades grass root democracy has been eroded, the evil which has emerged is that people have been led to believe that institutions of local self government are institutions of a "lesser democracy", with an unimportant role to play in the functioning of the Republic as a democracy.

7. When the Constitution of India was enacted for the people of the Republic of India, the generation which molded the Constitution had fought for democracy and extracted it from the British Empire, beginning with local self government. No revolution threw out the British Empire. There was an educated resistance seeking Home Rule, and local self government was a first step. The rest is history. Thus the Constitution came to give India a Parliamentary democracy. Local self government was not mentioned in the Constitution when it was enacted as it was inherent in the spirit of India, the people of India that grass root democracy is the necessary base of a democratic republic.

8. But, within twenty years of the framing of the Constitution, the systematic checkerboard of democracy was being destroyed. In a few States of the nation, and Bihar was one of them, the seeds were being sown in the nineteen sixties to erode local self government. This disease was infectious. It spread to other States. All the toil and labour of making grass root democracy the base of the pyramid of power was being lost. Independence was won hard, but grass root democracy was being lost easily.

9. It was the Courts which started giving decisions indicating that democracy was in peril. The first of these decisions came in the "Ordinance Raj" case from the Supreme Court. The scene was Bihar. Contrary to the State affidavit which has been filed that for 22 years grass root democracy has been absent, the Supreme Court judgment places on record that the foundations had been laid in the late sixties, and the first of the ordinances to eliminate local self government was issued in 1970.

10. Many other decisions followed from the Supreme Court and the High Courts that the absence of grass root democracy is dangerous. Local state government, which came naturally to the people of India, became a disappeared phenomenon. The founding fathers have framed the Constitution of India on a two-tiered structure of democracy, living in the confidence that local self government which caters to grass root democracy would naturally be there. They were wrong. Petty political intrigues and squabbles found that grass root democracy was inconvenient, and it began disappearing from many States in the nation.

11. The concern of serious politicians and thinkers who cherished democracy, and the Courts which constantly reminded politicians that the Republic was being run without local self government, brought changes in the Constitution. The Constitution was amended in 1992. It was done with the purpose of returning total democracy to the nation, and preventing those who played evil with politics

from ever having an occasion to destroy local self government. Thus State obligation to ensure that local self government functions under State laws, now became a constitutional mandate. The extent of damage to grass root democracy is so severe, however, that even after the Constitution had been amended over eight years ago, local self government has not yet returned to Bihar. This only shows that preserving democracy is a continuous exercise. Once lost, its return is not so easy. And, politics does not care whether the tenets of the Constitution are violated. Can anyone deny today that local self government is as much a part of a democracy as Parliament and State Legislatures are?

12. The Constitution of India, with the amendments which were brought in in 1992, brought in a five-tiered structure for democracy in India, in contrast to the two tiered structure when the Republic came into being. Democracy in India is not flowing from the Parliament and the State legislatures alone. Today, the Constitution ordains that it will function in five tiers. The absence of any one of them would render a Constitutional void. Total democracy is what the Constitution now ordains. Total democracy at all levels, without the absence of any.

13. The Parliament and the Legislature were always mentioned in the Constitution. The Panchayats and the Municipalities were specifically mentioned by a Constitutional amendment; and in between were sandwiched the local boards. The spirit of local self government, however, was always there in the Constitution. It was destroyed by those who worked it. Even the founding fathers desired that this five-tiered structure must be represented. Let us take the structure of the State legislature, a clear indication that grass root democracy was meant to exist is to be found in the formula for representation. The composition of the Legislative Councils in no uncertain terms lays down that about one third of the seats in the Council shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament by law specifies. This is how the Constitution stood when it was enacted. It is clear that local self government was an integral part of Parliamentary democracy, and this reflection in the State legislature was projected into the Federal Parliament as well.

14. Recourse in this regard may be had to Article 171 of the Constitution of India. The Court is mentioning nothing new as it has already reflected this in its earlier order of April 13, 2000. Democracy, thus, was to be worked in togetherness with representatives from all sections of the people of India. Clearly, then if local self government bodies-that is, grass root democratic institutions-are not represented, Parliamentary democracy is incomplete. Would it be fair to take major decisions in planning- whatever those decisions might be- in these circumstances? If the Court can be told that the elections must wait until the census is over, then is it not logical to also say that the Constitution demands that every level of total democracy be in its proper place before major decisions are taken? Could it not be argued that total democracy as envisioned in the

Constitution should exist and only thereafter could all the people participate in decision making? Major decisions, including that of splitting the State, have been made without provision for voices to be heard from the grass roots.

15. Representation of the people from the level of local self government has to be projected into the legislature. Only then would all sections of society and the people of Bihar be represented and able to join in the exercise of taking important decisions. The elections have been kept at bay and continue to be put off. The Court is being told that they will be held in November, then December, and now February, 2001. Then the Court is being told by the Directorate of Census that the result of the census enumeration will not be available until the later part of the second quarter of next year. The Court is being told that all else must wait, including elections at the grass roots, for yet another six months, if not nine.

16. All the delay is symptomatic of an attitude that grass root democracy and local self government are some sort of lesser democracy, not necessary for the functioning of the Republic. This is not so. Each representation in the legislature is on terms of equality. Each legislator represents particular constituents, and all represent the people of India. Yet today there are empty seats in the State legislature. The representatives of local self government are not there, because grass root institutions have not been elected. Representatives of grass root democracy, it must be repeated, are not representatives of a lesser authority. The Constitution gives them a place in the legislature, and thus a voice in decision making. Today, a decision has been taken that the State will be split into two. Has the complete legislature, as laid down in the Constitution, joined in this decision? The answer is no. Do such decisions have sanctity, with representatives from local self government having been kept out?

17. With total democracy absent and the grass root institutions unrepresented, perhaps deliberately kept out, there is no constitutional sanctity to policy decisions emanating from the legislature. In a democracy, even if one man who has a say in the affairs of the State is kept out of the decision making, it may be a majority decision, but it is still without the sanctity of an ordained pattern, the Rule of Law.

18. The Court is aware, of course, of Article 189 of the Constitution, which says that all decisions in the Legislature are determined by a majority of votes of the members present and voting, notwithstanding any vacancies. But the absences that this Article envisions are involuntary absences—a member may have been suspended or disqualified, or be unable to attend for other reasons. The framers of the Constitution may not have been able to imagine a situation in which a block of members of the Legislature was simply not elected. This creates a void, which is a far different situation from the absence of an elected member of the House.

19. If politics deliberately keep vacant seats in the House, with member not being elected, the sanctity of the decisions of the legislature could be questioned.

These empty seats mean truncated democracy, the antithesis the total democracy. Today, Bihar is an example of this. The Government is of dangerous ground until this fault is rectified by grass root elections.

20. Democracy encourages dissepiments and debate. But to dissent, people must have a right and a place to speak The right is a Constitutional right which the State is obliged to ensure. Local self government is at the ground level guaranteeing civic rights in urban area and village participation in rural area The Constitution has guaranteed this interaction in Government. The aspiration of local self government are also to be projected in the legislatures. The absent of this representation is a fault which is fatal, and could render all acts of this legislature void.

21. This deficiency in the representation in the legislature is not the democracy which the founding father's fought for. It is local self government which they yearned and fought for, and ultimately won from the British ever before Independence was finally won. It is grass root democracy which is the true measure of democracy and puts power in the hands of the people.

22. The people of Bihar have been denied this participation. Major decisions have been rushed, while the people are left frustrated and denied participation. The people of Bihar in the village who till the soil for themselves or for others, those in urban areas who are neither rate payers nor rent payers, the weak, illiterate, the impoverished-they do not know of even the basic rights. They do not know that the Constitution guarantees life and liberty, what to say of political rights. They do not know of the right to an attorney on arrest, of detention only up to 24 hours. These things have not been brought home to them as yet. Agricultural wages may still be paid in kind, illiterate children toil in roadside ventures to supplement the incomes of poverty-stricken families. Women with babes in arms labour on construction sites. It is for these people, too, for whom a democratic voice, a platform for participation in decision-making, has become a constitutional obligation.

23. The Constitution of India gives representation to these people with a three-tiered structure to be projected into the legislatures. Thus Articles 171 says that in the composition of the Legislative Council of a State, as nearly as may be, one third shall be elected by an electorate consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify.

24. With such total democracy absent in the legislature, one may well ask who took the decision to divide Bihar as if dividing the spoils of war between victors? Even in such a major decision, were the people truly and completely represented, as the Constitution requires?

25. In certain exigencies and emergencies basic democratic rights and participation may be suspended. The Constitution of India provides for this, but this is a power which a nation with respect for rule of law will not permit it to be

used. For 30 years Governments in Bihar have been allowing this suspension. The people, in faith or ignorance, have permitted it. The Courts have refrained from giving strong orders in this matter, to allow Government time to set things right, as it is up to the Government to arrange for the holding of elections at the grass root level.

26. The Government is asking for more time. Thirty years was apparently not enough. The eight years since the Constitutional amendment gave specific shape to grass root democracy has not been long enough for the Government to organise elections when nearly every other State has done so.

27. The Court will not be drawn in to giving or approving any specific date. Without the Government's cooperation, such an order would be meaningless. The Court has earlier pointed out that the obligation to hold elections at the grass root level is a Constitutional requirement. The Court points out that by avoiding this obligation, the Government is continuing to take decisions without the sanctity of the full Constitutional framework for democracy. The State Government has failed to follow the letter and spirit of the Constitution. Earlier governments were equally responsible. No Government has a right to exist without the constitutional basic pattern, including grass root democracy. Local self government can only be held in abeyance for the same period as a legislature may be a period of not more than six months. (See Article 243E for Panchayats, Article 243U for Municipalities and Article 174 for State Legislatures). The Constitutional mandate has failed in Bihar. Political parties without exception, regardless of ideologies and identities, have forsaken grass root democracy and have had no respect for local self government. At the State level a four tiered parliamentary democracy is prescribed, and also represented in the legislature. But of these three tiers remain missing. There is a void.

28. This writ Petition was filed to seek two main reliefs : (1) To ensure that the government of the State of Bihar is carried on in accordance with the provisions of the Constitution (Article 355), and (2) to declare that the government in Bihar has become undemocratic in not providing "lower level democracy".

The second of these requires a statement of fact, which has been made in the State affidavit brought on record on 31 October 2000. The postponement of Panchayat elections for more than two decades is accepted by the Secretary to the State Government.

29. The High Court cannot administer Bihar, but only speak in a given case, which it now has. With the order of 13 April 2000 and this order, the contention of the petitioner has been accepted. Now the Panchayat elections are to be held. Postponed to April- May 2001, these elections have now been "preponed" according to the affidavit of the State Secretary, Rural Development, to between the end of January 2001 and 20 February 2001, by which time the results will be declared. The State Government has dragged this issue on, and with it the people of Bihar have lost the experience of grass root democracy for the last

three decades. The democracy which the Constitution of India has structured has been kept at bay. The Government has admitted this and the process to fill this void will now begin. With this, this petition succeeds.

Aftab Alam, J.

I agree.