
(1984) 12 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No"s. 1000 and 4586 of 1981

Nawal Kishore Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-1984

Acts Referred:

Oaths Act, 1969 — Section 3(2)

Citation : AIR 1985 Patna 293 : (1985) 33 BLJR 290 : (1985) PLJR 310

Hon'ble Judges : S. Ali Ahmad, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Devendra Prasad Sharma, Umesh Lal Verma and Ram Kishun Singh, for the Appellant; C.S. Prasad, Jr. Counsel to Govt. Pleader and A.K. Sinha, Jr. Counsel to Govt. Pleader, for the Respondent

Judgement

1. The petitioner has filed two writ applications which have been heard together as similar question is involved in both of them, and they are being disposed of herewith.
2. The matter relates to the authority of the Executive Magistrates to administer oath to certain categories of persons, who have been authorised to discharge this function under different Government instructions to be referred to hereinafter.
3. The petitioner has been duly appointed as a Notary under the Notaries Act, 1952 (Act 53 of 1952) by the State of Bihar under the notification dated 15th Dec. 1978, at Jehanabad. By virtue of his appointment he has been authorised to do all or any of the acts and things mentioned in Section 8 of the Notaries Act in relation to verification, authentication, attestation of any document etc. and administer oath to or take affidavit from any person.
4. The State of Bihar issued notification dated 6-11-1975 (Annexure 1 to the first case -- C. W. J. C. 1000/81) u/s 3(2) of the Oaths Act (Act 44 of 1969) vesting the power to administer oath in Executive Officers in relation to judicial and other matters, and thereafter one instruction was issued by the Home Department

(Special Branch) of the State Government to the Registrar of this Court by his letter dated 3-2-1981 (Annexure 3), requesting him to direct all the Judicial Magistrates of First Class through their District & Sessions Judges, that if any freedom-fighter goes to them with an application for swearing affidavit, then for the purpose of convenience they should administer oath to him with respect to such application. In pursuance of this request on behalf of the State Government, the Registrar of this Court by his letter dated 2nd Feb. 1981 (Annexure-4) issued directions to all the District & Sessions Judges including the Judicial Commissioner, Ranchi, requesting them to instruct all the Magistrates of the First Class posted under them to take immediate action on the application of the freedom-fighters under the Pension Scheme formulated for their benefit by the Government, when presented in connection with swearing affidavit by the concerned applicants before them.

5. In C. W. J. C. No. 4586 of 1981, in para 3 of Annexure 1 the State Government in the Department of Labour and Employment issued direction to the Deputy Development Commissioners to the effect that in the scheme in relation to applications for getting token allowance by "educated unemployed" for the year 1981-82, the affidavits could also be affirmed before the Block Development Officers and Circle Officers declaring them to be Oath Commissioners.

6. The aforesaid authorisations -- in the first case by the Registrar of this Court to the Judicial Magistrates, and in the latter case by the State Government to the Block Development Officers and Circle Officers, are under challenge.

7. Learned counsel contended that under the notification u/s 3(2) of the Oaths Act which is the source of power, neither of the two classes of officers could be authorised to administer oath or affirmation. Section 3(2) of the Oaths Act authorises the High Court in respect of affidavits for the purposes of judicial proceedings and the State Government in respect of "other affidavits" to empower any Court, Judge, Magistrate or person to administer oaths and affirmation for the purpose of affidavits.

The argument of Mr. Devendra Prasad Sharma, appearing for the petitioner in both the cases, is that the relevant notification (Annexure 1 to C. W.J. C. 1000/81) u/s 3(2)(b) of the Oaths Act empowers only the Executive Officers ? dk;Zikydknf/kdkjh? and, therefore, the Judicial Magistrates in the first case and the Block Development Officers and Circle Officers in the second case, could not be directed to discharge the duties in relation to administration of oath or affirmation for the purpose of affidavits.

8. The expression "Executive Officer" is not defined in any statute. The only reference to such kind of Magistrates to our knowledge is found in the Municipal Act where a provision has been made for appointment of an Executive Officer in any municipality and Section 37(a) of the said Act provides for creation of a cadre of Executive Officers by the State Government, which, of course, is to form

a separate cadre, but they have to be officers of the municipality and their appointment has to be made by the Government in consultation with the Bihar Public Service Commission. If this interpretation and the apparent meaning is given to the Government notification contained in Annexure 1 aforesaid, then the position would be that for non-judicial works or "other affidavits" an applicant or the person for whose benefit and facility the Government intended to issue the notification, has to go only before the Executive Officer of a Municipality instead of the spring of Executive Magistrates posted extensively in remote areas from where the applicants might come. It is well known that in the State of Bihar municipalities are not everywhere, on account of the limits imposed for constitution of a municipality in relation to population. Apart from that, we are inclined to hold that the expression "Executive Officer" is a genus which would include all those officers who are enjoined with the obligations and duties of performing executive functions in the State and the expression cannot be given a narrower meaning as suggested by Mr. Sharma. Following the principles of construction which could make the legislation workable and serve its purpose and particularly in a case of this type of a circular, which is a part of a benevolent intention and a beneficial notification, we must construe it in such a manner which would make it workable instead of defeating its object and purpose, unless of course giving such a meaning would do some violence to the established principles and constitution of the Magistracy. If once this construction is accepted, then the notification in the second case by which the Block Development Officers and Circle Officers have been empowered, must be held to be perfectly valid and legal. But even giving this liberal interpretation, we find difficulty in upholding the instruction of the Registrar of this Court contained in Annexure 4 to the first writ application (C. W. J. C. 1000/-81), whereby a direction was issued to discharge this function by the First Class Judicial Magistrates.

It is well known that after the separation of the Judiciary from the Executive on coming into force of the new Code of Criminal Procedure, the High Court empowers the officers of the rank of Munsifs to deal with criminal matters which now come to the Civil Courts and those Magistrates are called Judicial Magistrates as they are to hear and dispose of cases which come for trial of the accused persons before them. This category of Magistrates, i.e., Judicial Magistrates, cannot be covered under the definition of the expression "Executive Officer".

9. We would accordingly allow C. W. J. C. No. 1000 of 1981 and quash the order dated 19-2-1981 contained in Annexure 4 thereto, but would dismiss C. W. J. C. No. 4586 of 1981 in which the similar authorisation to the Block Development Officers and Circle Officers has been challenged. Let an appropriate writ issue accordingly. In the circumstances, we shall make no order as to costs.