
(2008) 03 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 2711 of 2003

Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Constitution of India, 1950 — Article 38

Citation : (2008) 56 BLJR 2361 : (2008) 3 PLJR 704

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : D.K. Sinha and Abhinay Raj, Rajeev Kumar Singh, Ramakant Sharma, Shyama Prasad Mukherjee, Binod Kumar Ambastha and Atul Chandra, for the Appellant; Awadhesh Kr. Pandey, G.A.7, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by Pragatisheel Adhivakta Sahayak Kalyan Sansthan, Patna through its Secretary General along with a founder of the said Sansthan which is a society registered under the Societies Registration Act in the year 1988 bearing registration No. 508/1987-88 created by and for the Advocates' clerks of Patna High Court for the welfare and for upliftment of moral, intellectual, social and financial interest of its thousands of members Advocates' Clerks.

2. Through this writ petition the petitioners want issuance of a writ in the nature of mandamus directing the respondents- State of Bihar to formulate and implement a law for regularizing welfare scheme and for making other necessary provisions required for the existence, social security and similar other benefits for the Advocates' Clerks of Patna High Court who are registered under the provision of Chapter XVIII of Part IV of Patna High Court Rules, 1916 as has been provided in the States of West Bengal and Andhra Pradesh which had enacted West Bengal Law Clerks Act, 1997 (Annexure-13) and Andhra Pradesh Advocates Clerks' Welfare Fund Act, 1992 (Annexure-4) and Andhra Pradesh welfare fund

Rules, 1992 for the said purpose.

3. It transpires that earlier also a writ petition bearing CWJC No. 12393 of 2001 had been filed by the petitioners claiming that they had already filed representations and reminders before the concerned authorities of the State of Bihar for the said purpose, but neither any step has been taken by them nor any order has been passed on the said motions. The said writ case was disposed of by this Court vide order dated 02.11.2001 (Annexure-9) with the following observations/directions:

After hearing the parties this Court is of the opinion that this petition can be disposed of with a simple and innocuous direction that the representation/reminder pending before the concerned authority/State Government for consideration shall be disposed of by the concerned authority/ State authority within a period of four months. It is expected from the concerned authority/ State authority that while disposing/deciding the representation/reminder, if any, they shall pass speaking order.

4. In view of the aforesaid directions of this Court, the matter was considered by the then Law Secretary, Government of Bihar, who passed his order dated 07.10.2002 (Annexure-10) holding that if such welfare law is enacted it will put huge financial burden not only on the State of Bihar, but also on the litigating public and hence enacting such a law was not possible. Accordingly, the representation of the petitioner was rejected.

5. After their representation was rejected by the then Law Secretary, Govt. of Bihar, the petitioners filed this writ petition for the aforesaid reliefs. A counter affidavit was filed on behalf of respondent No. 2. Deputy Legal Remembrancer, Law Department, Government of Bihar, Patna, stating that the order passed by the then Law Secretary was legal and proper and there was no proposal for introducing any such bill and furthermore the copies of enactments of West Bengal and Andhra Pradesh were not supplied to the authorities. However, when the matter was taken up by this Court on 02.02.2007, the learned Counsel for the respondent-State of Bihar submitted that with respect to the reliefs sought for in the writ petition, the Government has to take a policy decision and for that purpose some time was required to consider the Acts, Rules and Regulations framed in other States in that regard and hence six weeks adjournment was given by this Court for that purpose. But subsequently the respondents took a U-turn and filed a rejoinder on affidavit on 09.03.2007 stating as follows:

That the petitioner by filing reply to the deponent's counter affidavit is vexing the matter. It is not a fact that the respondent has no objection in improving the condition of Advocate Clerk by formulating and implementing law of the welfare scheme to be in the alleged pattern of West Bengal and Andhra Pradesh. The respondent is still unaware to the provisions allegedly enforce in the aforesaid two states. The Bihar Bar Council is the competent authority to introduce any welfare scheme for the Advocate clerks.

6. In the said circumstances by order dated 13.03.2007, copies of petitions and affidavits filed in this case were directed to be served upon the Secretary, Bihar Bar Council, Patna (Respondent No. 6) so that he may file his reply. Thereafter the Bihar State Bar Council (respondent No. 6) filed its counter affidavit on 23.05.2007 stating that it has got no objection for introduction of welfare scheme of the Advocates Clerks as they are part and parcel of the institution, but the Bihar State Bar Council had no authority to make any such Act, Rule and Regulations, rather such power is vested in the State Government. He also submitted that the Acts and Rules of West Bengal and Andhra Pradesh are available with the Bihar State Bar Council, but no petition had been filed before it by the petitioners for making any recommendation to the State government till 23.05.2007 on which date such a petition had been filed on behalf of the petitioners which has to be considered in a meeting of the Executive Committee of the Bihar Bar Council for its approval. When the case was taken up by this Court the matter was adjourned for the said purpose by order dated 24.05.2007.

7. In compliance of the said order a meeting of the Executive Committee of the Bihar State Bar Council was held on 30.05.2007 in which it was resolved that although it cannot bear the financial liability, but they have no objection to enactment of any such law by the State Government and for that purpose they would send its recommendation along with copies of the Acts and Rules of West Bengal and Andhra Pradesh to the State of Bihar within one week. In the said circumstances, by order dated 01.06.2007, this Court adjourned the case with following observations/directions.:

Since the State Government in its counter affidavit dated 09.03.2007 has stated that the State or its authorities have no objection in improving the condition of Advocates' Clerk by formulating and implementing the law of welfare scheme in the pattern of other States, but they were earlier unable to do as they were unaware of the provisions allegedly enforced in the other States and there was no such recommendation from the Bihar State Bar Council. Now the recommendation duly passed by its Executive Committee is being sent to the State Government along with the copies of the Act and Rules of the said States. The State Government should take a final decision in that regard within one month thereafter.

8. It transpires that the Bihar State Bar Council has sent its aforesaid recommendation to the Chief Secretary, Government of Bihar, Patna on 19.07.2007 (Annexure-C to the supplementary counter affidavit of respondent No. 6). Thereafter the case was listed on several dates, i.e. 30.07.2007, 07.08.2007, 09.08.2007 and 03.10.2007, but learned Counsel for the State took adjournments for the aforesaid purpose. On 04.10.2007, learned Counsel for the respondent-State again sought adjournment to ascertain the stand of the Finance Department and also to take instruction from the other Departments concerned and to explain their difficulties and objections in placing such a bill before the Legislature. Hence, the case was again adjourned on that date as well

as on 31.10.2007 for the said purpose and the case was placed for arguments on 12.11.2007.

9. On 12.11.2007 a counter affidavit was filed on behalf of respondent No. 4, the Commissioner, Finance Department, Government of Bihar, Patna, stating that enactment of any law by one or two States does not cast an obligation on the other State to bring similar enactments. It was further stated that the petitioners have nowhere stated that how their fundamental rights were affected if the law, as prayed for, is not enacted and hence they cannot claim for enactment of any legislation in that regard specially when it is motivated by their selfish interest and not by public interest and hence the petition filed by the petitioners is not maintainable under the writ jurisdiction of this Court.

10. Although the Registrar General of Patna High Court has been impleaded in the writ case as respondent No. 5, but learned Counsel for the Patna High Court submits that neither there is any claim against it nor it has any concern with the enactment of any Law and hence he has nothing to say in that regard. An interlocutory application for intervention has been filed on 03.10.2007 by Bihar Vidhi Lipik Mahasangh, a registered Union of Advocates" Clerks of the State of Bihar, for being added as a party to the writ case claiming that they are also entitled to the same reliefs as claimed by the petitioners. Since the basis of the claim of the intervenors are also the same and they are also relying upon the Acts and Rules enacted in the States of West Bengal and Andhra Pradesh, the said interlocutory application is allowed and the intervenor is added as a party respondent to the writ case.

11. After hearing learned Counsel for the parties and after perusing their petitions, affidavits, rejoinders and replies and also from the facts and circumstances of the case, it is quite apparent that ours is a welfare State in which welfare of each section of the society has to be considered. As per the directive principles of the State Policy the State has to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life. When our constitution was prepared and Article 38 was enacted in it, the phrase "economic and social justice" which would promote the welfare of the people had acquired a meaning which is conveniently described by a phrase "Welfare State". As per a recent definition the "Welfare State" is a system in which the Government undertakes the chief responsibility for providing for the social and economic security of its population usually through security measures and creates a social system characterized by such policies. The welfare measures do not have any last word and such measures have to be taken from time to time as and when required and accordingly laws have to be enacted or amended by the State as per the necessities of a particular time keeping in view the aforesaid directive principles of the State Policy.

12. From the averments of the learned Counsel for the State and its authorities and also from the various counter affidavits filed by them it is quite apparent that

they are fully aware of their duties towards a Welfare State and their objections to the claim of the petitioners were only as follows:

(a) If such a law is enacted it will put huge financial burden not only on the State of Bihar, but also on the litigating public.

(b) The authorities of the State were unaware of any law enacted in any other State of India.

(c) The Bihar State Bar Council is the competent authority to introduce such welfare scheme for Advocates Clerks. And the Bihar State Bar Council has not even made any recommendation to the State Government for enacting any such welfare law.

(d) Enactment of any law by one or two States does not cast any obligation on the other State to bring similar enactments.

(e) The petitioners cannot claim enactment of any such legislation when their fundamental rights were not affected.

(f) The petitioners' petition is motivated by their selfish interest and not by public interest.

(g) In this regard the Government has to take a policy decision and the matter is beyond the jurisdiction of this Court.

13. So far the first objection is concerned, there is no question of any financial burden on the State if the aforesaid welfare law is enacted. From the provisions of West Bengal and Andhra Pradesh Act, it would be quite apparent that this apprehension of the respondent-authorities is absolutely baseless and no financial burden at all has been put on the State. However with regard to financial burden upon the litigating public it may be pointed out that for the purpose of the welfare scheme for the petitioners the enactments of the other two States provided welfare stamp worth only Rs. 2.00 upon each vakalatnama filed on behalf of any party to the proceeding. It may be made clear that for the purposes of providing a welfare scheme for the Advocates of the State, the Bihar State Advocates' Welfare Fund Act, 1983 and the Bihar Advocates Welfare Fund Rules, 1984 have been promulgated by the State of Bihar according to which welfare stamps were to be affixed on every vakalatnama without which no vakalatnama was to be received by any court. Earlier the value of such stamp to be affixed on the vakalatnama was Rs. 5.00 per vakalatnama which has been now raised to Rs. 20.00 per vakalatnama by notification dated 07th January, 2008 (Bihar Act, 04, 2008). It may also be noted in this regard that value of the stamps to be fixed on affidavits filed in the High Court was Rs. 25 which has been now raised to Rs. 30 and interlocutory application was Rs. 20.00 which has been now raised to Rs. 250.00 and the writ petition was Rs. 250.00 which has been now raised to Rs. 500.00. In the said circumstances, fixing a welfare stamp worth only Rs. 2.00 on each vakalatnama is definitely not going to cause any huge financial burden on the litigating public.

14. So far the second objection is concerned, the respondents-authorities specially its Law Secretary (respondent No. 2) ought to have knowledge and information with respect to such enactments. In any view of the matter, the petitioners have already supplied copies of the aforesaid enactments of West Bengal and Andhra Pradesh along with their petition and reply upon learned Counsel for the State and in addition to it the Bihar State Bar Council has also supplied copies thereof to the authorities concerned. Hence, such objection on behalf of the respondents is not tenable.

15. So far the third objection of the respondents-authorities is concerned, it is ridiculous and frivolous to say the least. Definitely the Bihar State Bar Council has no jurisdiction either to enact a law or to pass such welfare scheme. However, the Bihar State Bar Council has already fulfilled its duties and responsibilities by considering the matter in the meeting of its executing committee and has already sent its recommendations before the authorities of the State of Bihar for enactment of such law.

16. So far the fourth objection is concerned, no doubt the State of Bihar is not bound to enact a law merely on the basis that such a law has been enacted by any other State, but they can certainly consider enacting such a law if it is necessary as per the directive principle of the State Policy for the welfare of a needy section of the society.

17. So far the fifth objection is concerned, no doubt the fundamental rights as provided in the constitution of India are not at stake in the instant case, but the State of Bihar and its authorities have to consider that they are the authorities of a welfare State and are bound by the Constitution of India which also provide the directive principles of the State policy. But it appears that the then Law Secretary of the Government of Bihar while passing his order dated 07.10.2002 (Annexure-10) completely ignored the aforesaid aspect of the matter and rejected the petitioners' representation only on a non-existent and frivolous ground that if such welfare law is enacted it will put huge financial burden not only on the State of Bihar but also on the litigating public.

18. So far the sixth objection is concerned, definitely this is not a public interest litigation, but at the same time, the instant writ petition cannot be termed as "selfish litigation." The Advocates Clerks are integral part of the institution of the courts as they are employed by an advocate ordinarily practicing in the High Court and the courts subordinate thereto in accordance with Rules and practice of the court. They are employed by an advocate enrolled in the Bihar State Bar Council and on the application of such an advocate the Registrar of the Court registers such a clerk under the provisions of the Patna High Court Rules and Civil Court Rules and a card in the prescribed form is issued to them and they are liable to pay registration fees regularly in the court under Chapter XVIII of the Patna High Court Rules as well as Chapter V of the Civil Court Rules.

19. In the said circumstances, when the State has felt the necessity of

promulgating a welfare scheme for the advocates of the State by bringing into force the Bihar State Advocates Welfare Fund Act, 1983 and the Bihar State Advocates Welfare Fund Rules, 1984, there cannot be any justification why such a welfare scheme should not be promulgated for the welfare of Advocates Clerks who generally belong to a segment of the society which is weaker. Furthermore, Advocates' Clerks are also essential part of the offices of Advocates which cannot function without advocate clerk not only for the office works but also for court works of their Advocates, hence their welfare is as important as the welfare of the advocates for imparting justice by courts. However, it has to be added in this connection that if such a welfare scheme is to be promulgated it has to accompany with it the duties, responsibility and qualifications as required for an Advocate's clerk.

20. So far the last objection of the respondents is concerned, inspite of the aforesaid facts and circumstances, the matter in question is with respect to a policy decision which has to be taken by the State Government with respect to enactment of a law by the legislature. It is beyond the purview and scope of the writ jurisdiction of this Court and it is for the authorities of the State and the legislature to consider the matter and take appropriate decision for which no direction can be issued by this Court.

In the said circumstances, this writ petition is dismissed.