
(2004) 04 PAT CK 0122
In the Patna High Court
Case No : CWJC No's. 11320 of 2002

Rama Kant Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Citation : (2005) 3 PLJR 603

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Yugal Kishore in 11320, for the Appellant; S.A. Hussain (in 11320) For the State and Mr. Naresh Dikshit (in 11320) For the Respondent agency, for the Respondent

Judgement

R.S. Garg, J.—The Secretary of the department has filed his personal affidavit. The affidavit filed by him simply shows that the Government is disowning these corporations/agencies as their babies. It is submitted by the Secretary in his counter affidavit that the Chairman of the agencies had been appointing people illegally and the State is to put to unnecessary loss. It is also stated in the affidavit that a poor State like Bihar is unable to bear the expenses, therefore, the agency must generate its fund in accordance with the provisions of the Act. On one side, the State Government says that these agencies are developmental autonomous agencies and at the same time the State says that the agencies would not be justified in giving salary to its staff in the revised pay scale. I fail to understand the stand taken by the State Government. If the bodies are autonomous, they would be always free to take their own decision and if it is not autonomous and has to dance to the tune of the State Government or it is a baby delivered by the State authority then the State has to look after it. The State cannot be allowed to act in a dubious manner. They cannot be allowed to eat cake and have it. Looking into the convenience of the State the affidavits are being filed and the authorities say that it is an autonomous body, therefore, the State is not answerable but at the same time they say that the cabinet has taken a decision that the employees of these agencies should not be paid in the revised

scale. In paragraph 5 of the affidavit, it is said that the decision regarding the revised pay scale to the State employees do not cover them. The State says that it became necessary that the proposal of revised pay scale for these agencies should be sent to the Council of Ministers. I am again at a loss to understand that if it is an autonomous body under the Act and is getting certain grants from the State Government or the Central Government then how can the State Government take a policy decision in the matter of an autonomous body, how can the State Government thrust its opinion upon an autonomous body. It appears that the State Government wants to have the control of the agency but without any further liabilities. The State Government appears to have created these agencies mainly to avoid direct burden on the exchequer and not to give the status of the government employees, to the employees of the agency. If the State creates an autonomous body under an Act then the State except as provided under the Act cannot interfere with the management of the autonomous body. It cannot ask the management to observe the decision of the State Government nor it can ask its Officers who are sent on deputation to take a decision as the State Government wants. Let the Secretary of the department file his further affidavit that if the agencies are autonomous bodies then under what authority of law or under what authority of administrative business or under what authority of Act No. 3 of 1979, the State has issued a direction that the government employees sent on deputation would be paid in full and the employees engaged by the agencies would not be paid in their revised pay scale. It is also to be seen from Section 3 of the Act that the agency is to be constituted in a particular manner. Section 4 says that for every agency set up u/s 3 of the Act, the State Government shall by notification published in the official gazette, constitute a board consisting of the persons well described in sub paragraphs (a) to (m) of sub-section 1 of section 4. A bare perusal of section 4 would show that the Board is to be appointed by the State Government. The policy decisions are to be taken by the Board. Sub-section 2 of Section 4 says that the Chairman of the Board and the Managing Director shall be appointed by the State Government who shall hold office at the pleasure of the State Government and the State Government shall prescribe terms and conditions. In the additional counter filed by the Secretary, it has been stated that Chairman of the Board has appointed 77 persons illegally but the counter affidavit is beautifully vague on the point that what action has been taken against such Chairman who was sent by the Government and has appointed 77 persons illegally. Let the Secretary of the department also state in his further affidavit that as to what positive action has been taken against such Chairman, whether such Chairman continues and what particular action is proposed by the department itself.

2. Section 4 further provides that the members of the Board other than ex-officio member shall hold office at the pleasure of the State Government. It further says that the executive authority of the agency shall vest in the Board, Sub-section 4 directs the vesting of the authority in the Board. A fair understanding of sub-section 4 of section 4 would make it clear that the authority has to act as an

autonomous body and the Board has to take its own decision. Unfortunately, even after constitution of the agency and creation of the Board the State Government is still interfering in day to day proceedings of the agency which is not permissible under the law. If the State says that it is not responsible for the acts of the agency or it disowns the agency then it has no authority to issue any direction to the said body to act in a particular manner. The powers of the State Government are in relation to constitution of the agency and creation of the Board. The powers are not to interfere in day to day proceedings.

3. At this stage, learned counsel for the petitioner produced complete copy of Annexure-5. Let the same be filed with additional affidavit and be also supplied to the State Government. From the complete copy of Annexure-5, it appears that the present Secretary of the department Mr. V. Jayshanker, who was Registrar Co-operatives in 1990, attended a meeting of Sone Command Area Development Agency on 15/16 February, 1990. Item No. 13/90 was in relation to giving benefit of the revised pay scale to the agency's employees in accordance with the revision given by the State Government. The resolution was that the Chairman of the Agency himself was competent to issue orders in relation to revision of pay. It was also observed that in accordance with the recommendations of the State Government the benefits would be given to the employees of the Sone Command Area Development Agency. The resolution further says that the Chairman of the Sone Command Area Development Agency stands authorised to take such decision in future. If that was the resolution of the committee/Board then I fail to understand that how could a person who was a party to the proceeding can say that the action taken by the State Government is absolutely justified. Let the Secretary file his further statement in relation to that resolution.

4. I will refer back to the provisions of the Act. Learned counsel for the State submits that in accordance with the provisions contained in section 33 of the Act, the State Government for carrying out the purposes of the Act, may from time to time give to the Agency such general and or special direction on matters of policy as it thinks fit and the agency shall comply with such directions. In the present matter, the decision is to be taken by the agency itself. If the agency is not allowed to take its decision and the State Government starts issuing direction then that would tantamount to making an in road into the authority of the Board of the agency.

5. Learned counsel for the Sone Command Area Development Agency submits that from perusal of Annexure-8, it would clearly appear that the Commissioner-cum-Chairman of the Sone Command Area Development Agency has already decided that the benefits of 6th Pay Revision Commission be given to the employees of the Sone Command Area Development Agency. He also submits that in view of the resolution No. 13/90 dated 15.2.90, under which the Chairman was authorised to take decision, the Chairman has taken -such decision as contained in Annexure-8.

6. Let the Secretary file the affidavit as required by this Court.

7. The photostat copy of Annexure-5 was shown to Mr. V. Jayshanker, Secretary of the Department. Mr. V. Jayshanker was asked a pointed question that whether he was Registrar of the Co-operative Societies or not; firstly, he said probably and thereafter he said he was Registrar of the Cooperative Societies. This Court again asked that whether he had attended the meeting of the Sone Command Area Development Agency, he said that he does not remember. Through his counsel he said that he wants to go through the records to verify correctness of the allegation and also to see that under what circumstances that decision was taken. He further stated that the financial condition of the Sone Command Area Development Agency was good at that time, therefore, that decision might have been taken. I am unable to understand that what is the stand of the Secretary.

8. It is to be noted that the case was taken up at 3.30 p.m. and it is already 4.30 p.m. At this stage, Syed Alamdar Hussain, learned counsel for the State submits that he be allowed to withdraw from the case. He says that some letter was written by the Secretary, Water Resources Department to the Law Secretary that at the time of hearing some senior Additional Advocate General be asked to appear in the matter so that the Government's defence is placed properly and inconvenient situation is not created in the matter. Mr. Syed Alamdar Hussain says that the Secretary-cum-Legal Remembrancer sent the photo copy of the letter to the Advocate General of the State but the same was later on forwarded to him. He says that the letter has been sent to him by SC. VIII. He submits that he thought that he has to appear in the matter, therefore, he appeared.

9. In presence of as many as fifty lawyers present in the Court, I asked Mr. V. Jayshanker that whether he was satisfied with the submissions made by Mr. Alamdar Hussain or he wanted a Sr. Counsel to appear in his matter as he raised no objection at the threshold. Mr. V. Jayshanker says that he did not know anything that who would appear in the matter despite his request, therefore he did not say anything. In a matter of appearance in the Court, it is always for a client to repose his confidence in the counsel. If the counsel engaged by the party does not discharge his services satisfactorily, the client is entitled to change and if the counsel feels that he is unable to satisfy the Court for certain reasons personal to him, he even may not appear in the matter and with the permission of the Court he can always withdraw. In the present matter, if Mr. Alamdar Hussain was of the opinion that he should not appear in the matter or he is not required to appear in the matter then at the open of the argument he should have said so. In any case, it is a dispute between the client and the counsel and the Court has nothing to do. If Mr. Alamdar Hussain appears and argues, the Court has no objection and if withdraws the Court cannot force him to argue the matter. The Secretary of the Department present in the Court may take note of the fact that Mr. Alamdar Hussain in his presence has made a request to the Court that he be allowed to withdraw. If Mr. Alamdar Hussain does not appear in the matter on the next date then the State will have to make

alternative arrangement.

10. Learned counsel for the State submits that the Chairman of the Sone Command Area Development Agency shall be back on 16th May. Let the matter be taken up on 20th May. On that date, he shall file his detailed affidavit.

11. The Chairman of the other agencies including the Chairman of Sone Command Area Development Agency shall file their detailed affidavit as to what independent actions are being taken by the agencies in relation to the revision of pay. They would also be obliged to inform this Court that against the demand made by them what amounts are being sanctioned and forwarded to them to meet the establishment and development expenses. They would also be obliged to inform this Court that what are the establishment expenses and what amount is being spent towards development and out of the establishment expenses what amount is paid to the deputationists. Put up on 20th May, 2004, as ordered, on top of the list.