
(2004) 01 PAT CK 0087
In the Patna High Court
Case No : C.W.J.C. No. 3291 of 2003

Rama Shankar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 22, 24, 45
Constitution of India, 1950 — Article 19(1), 243G

Citation : (2004) 2 PLJR 74

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Wasi Akhtar and Md. Rashid Alam, for the Appellant; K.P. Yadav and T.K. Sinha for State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 6.12.2001 (Annexure-2) whereby the State Government has taken a decision that in case of a close relation getting elected as Mukhiya, Sarpanch or Ward Member, the appointment of such relative as dealer under the Public Distribution System, shall be kept in abeyance during the period such relative holds the office. Further prayer made by the Petitioner is to quash the order dated 20.2.2003 (Annexure-4) whereby the allotment of foodgrains to the Petitioner under the Public Distribution System has been stopped and he has been asked to show cause as to why his appointment as dealer be not cancelled, so long his brother continues as the Member of the Panchayat Samiti.

2. Shorn of unnecessary, details, facts giving rise to the present writ application are that the Petitioner was appointed as a dealer for distribution of foodgrains under the Public Distribution System (hereinafter referred to as "PDS") and an agreement to that effect dated 15.1.2002 (Annexure-1) was executed. In pursuance of the said appointment as dealer, Petitioner was allotted foodgrains, which according to him were distributed to the card holders without any complain

or murmur. In the Panchayat Election held in April, 2001, Petitioner's brother. Ram Sagar Singh has been elected as the Member of Patahi Panchayat Samiti. It is relevant here to state that the State Government, in its Food, Civil Supplies and Commerce Department, issued letter dated 6.12.2001 (Annexure-2), addressed to all Divisional Commissioners and District Magistrates conveying its decision to cancel the appointment of such dealer who have been either elected as Mukhiya, Sarpanch or Ward Member or such of the dealer whose close relative has been elected as such, during the tenure of the said office. Letter dated 15.12.2002 of the State Government further stipulated that mother-father, brother-sister-in-law, husband-wife, daughter, daughter-in-law even if living separately, shall come within the expression "family members". In the light of the aforesaid decision of the State Government, the Subdivisional Officer, by impugned order dated 20.2.2003 stopped the allotment of foodgrains to the Petitioner as a dealer under the PDS and asked him to show cause as to why his appointment as dealer be not cancelled for the period his brother continues to be the Member of the Panchayat Samiti.

3. Mr. Wasi Akhtar, Senior Advocate, appears on behalf of the Petitioner, whereas the State is represented by Shri T.K. Sinha, Junior counsel to Standing Counsel No. V.

4. Mr. Akhtar submits that Panchayat Samiti having no role to play in the distribution of the essential commodities under the "PDS" the State Government's decision to cancel the appointment of relative as a dealer for the period such relative holds office is illegal. I do not find any substance in this submission of Mr. Akhtar. His every assumption that the Panchayat Samiti has no role to play in the distribution of foodgrains under the PDS is absolutely misconceived. Section 22 of the Bihar Panchayat Raj Act, 1993, hereinafter referred to as the "Act" provides for functions of the Gram Panchayat and one of its functions as enumerated u/s 22 (xxii) of the Act is in relation to PDS. same (sic) as follows:

22. Functions of Gram Panchayat.

xxx

(xxii) Public Distribution System--, Promotion of public awareness with regard to the distribution of essential commodities.

xxx

5. Section 45 of the Act provides for functions and powers of Panchayat Samiti and Sub-Section 24 thereof contemplates distribution of essential commodities under the PDS as one of its functions. Same reads as follows:

45. Functions and powers of Panchayat Samiti

xxx

(24). Public Distribution System-- Distribution of essential commodities.

xxx

6. Thus one of the functions of the Panchayat Samiti is distribution of essential commodities under the PDS and as such, it cannot be said that the Panchayat Samiti has no role to play in the distribution of foodgrains.

7. Further, the decision of the State Government is in the realm of policy decision. The State Government's right to change its policy from time to time, in changing circumstances cannot be questioned and is subject to judicial review only when it is demonstratively arbitrary, capricious, irrational, discriminatory or violative of Constitution or statutory provision. To me, the policy decision instead of being suffering from any of the vices referred to above, looks laudable. Article 243G of the Constitution of India provides for power, authority and responsibility of the Panchayats, same reads as follows:

243G. Powers, authority and responsibilities of Panchayats.--Subject to the provisions of this Constitution, the Legislature of a State may by law, (sic) do the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

8. From a plain reading of Article 243G(b) of the Constitution it is evident that the implementation of scheme including those in relation to matters listed in Eleventh Schedule is the responsibility of the Panchayat. Public Distribution System is item No. 28 of the Eleventh Schedule. In my opinion, it is to obviate the tendency to show favours to themselves or their relatives, in carrying out the constitutional obligation by the Panchayat that the decision has been taken to cancel the appointment of elected persons and their relatives as dealer.

9. A Division Bench of this court had the occasion to consider this question in the case of Surendra Sharma and Others Vs. State of Bihar and Others, wherein it has been observed as follows:

4. The policy has a pattern and is in the spirit of the Constitution of India under Article 243G of the Constitution under the Chapter "Panchayat". Even distribution of essential commodities to persons below the poverty line is the dominant purpose of the public distribution system". In the eleventh schedule of the Constitution, item 28 refers to "Public Distribution System". In the circumstances, the Panchayats cannot go around and carve out a pattern for themselves for distributing largesse and presents amongst the members of the Panchayat or their relatives to doll out licences of ration shops.

5. In the present case, an objective of the policy is that such a circumstance may not be rendered in rural Bihar that the kinsmen of every conceivable person elected to the office of Mukhiya or Sarpanch or for that matter a Ward Member has a direct nexus or connection with the ration shop.

6. In the circumstances, the State formulated a policy that from the Ward member upto the Mukhiya, their close relatives (the expression used in the circular announcing the policy is ("Nikat Samabandhi")) should not be running a ration shop dealing with goods for the public distribution system on a licence granted by the State."

7. The details on the status of the Petitioner emerged slowly during the course of the arguments on the petition. Proceeding in the reverse order, the Petitioner No. 3 Sanjay Kumar acknowledges in paragraph 12 that he is a Ward Member and also has a licence to run a ration shop under the public distribution system. The Petitioner No. 2 Umesh Prasad Singh alias Umesh Kumar Singh, learned counsel acknowledges, as a son who is a Ward Member of a Panchayat. The Petitioner No. 1 Surendra Sharma has a cousin who is a Ward Member. Thus, all the three Petitioners have a direct nexus with a ration shop being run by their close relatives. The sooner such practices are put to an end it would be better particularly when Panchayats are being made functional in the State and are seeing a return after almost a quarter century. Such vested interests of the pattern which are attempted to be discouraged, must necessarily be kept at bay.

10. Mr. Akhtar, then submits that the Petitioner's fundamental right guaranteed under Article 19(1)(g) of the Constitution of India to carry on business has been violated. This point need not detain me much and is fit to be rejected in view of the pronouncement of this Court in the case of Surendra Sharma (supra) wherein it has been held as follows:

3. The Petitioners are under the impression that the permission or the licence to sell essential commodities under the Public distribution system is a business which is guaranteed to them and it is their fundamental right to do such a business. First, the question which the court is to examine, is whether it is a fundamental right of a citizen to be guaranteed a licence to deal with goods under the public distribution system. The answer is not complicated. To sell commodities from a ration shop on a licence is not a business like any other trade. Essential commodities at a controlled price under State subsidies are not for trade. It is another matter that such commodities are traded through the back door in a parallel economy, These are socio-economic measures and, thus, ration shops are meant to cater to the needs of persons below a certain economic level. It is at best a licence which the State may recall for a given reason.

11. Mr. Akhtar, then submits and to use his expression, "on account of cancellation of the Petitioner's licence", he cannot carry out his business in foodgrains and this surely, in his submission, is in breach of the Petitioner's

fundamental right. I do not find any substance in this submission of Mr. Akhtar. There is a grave misconception that cancellation of appointment as dealer under the PDS, ipso facto prohibits such dealer from carrying out the business in foodgrains. It has to be borne in mind that licence to carry on business of specified foodgrains is provided under the Bihar Trade Articles (Licences Unification) Order whereas the dealer under PDS is appointed by virtue of executive power and for that an agreement is entered between the State and the dealer. Therefore, cancellation of appointment as dealer itself shall not prohibit the dealer to carry on business of foodgrains in accordance with terms and conditions of the licence granted under the Bihar Trade Articles (Licences and Unification) Order. In this connection, reference can be made to a decision of this Court in the case of Krishna Kumar Vs. State of Bihar and Others, , the relevant portion whereof reads as follows:

4. This is, however, not the end of the matter. The grant of a retail licence under the Unification Order is one thing and the grant of dealership under the Public Distribution System is something quite different. It is true that for a dealership under the Public Distribution System the dealer must have a retail licence but the converse evidently is not true and it cannot be said that every one having a retail licence must also be given a dealership under the Public Distribution System. The dealership under the Public Distribution System is simply an agency and would be governed by the law of agency in which the government is the principal and the dealer is the agent. If for any reason the principal no longer wishes to continue some one as dealer the dealership cannot be claimed as a matter of right.

12. Mr. Akhtar lastly submits that the Petitioner had come within the mischief of decision of the State Government dated 6.12.2001 in view of its decision dated 15.12.2002 (Annexure-2/A) whereby, the brother and other relatives have been brought into the net, which cannot be applied retrospectively in the case of the Petitioner who was appointed as a dealer prior to that on 18.1.2002. It seems that on account of the controversy as to whether separated brother shall come within the expression "relative" the State Government issued letter dated 15.12.2002 clearly indicating that even separated brothers shall also come within the expression "relative". The decision of the State Government in no uncertain term has provided that those appointments which were made earlier, shall also be governed by the decision, hence Mr. Akhtar's contention that it cannot be applied retrospectively, is absolutely misconceived. In my opinion, the decision itself having provided for its retrospective application, same cannot be said to be invalid.

13. In the result, I do not find any merit in this application and it is dismissed accordingly. No cost.