

(2003) 04 PAT CK 0013
In the Patna High Court
Case No : L.P.A. No. 217 of 1996

Ravindra Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 243ZD
Patna Municipal Corporation (Amendment) Act — Section 62, 63A

Citation : (2003) 04 PAT CK 0013

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Abhay Kumar Singh, Jitendra Singh and Rajiv Kumar Singh, C.S. Prasad and Ashok Kumar Sinha No. 2, for the Appellant; Binod Kumar Singh, Kumar Abhimanyu Pratap and V.N. Sinha and Subodh Chandra Jha, for Respondent No. 5, for the Respondent

Judgement

Ravi S. Dhavan, C.J. and R.N. Prasad, J.—There has been a see-saw battle between Ajay Kumar Sinha, the Petitioner in C.W.J.C. No. 8562 of 1996 (Ajay Kumar Sinha v. The State of Bihar and Ors.) and Rabindra Kumar, Respondent No. 7 as to who should be the Chief Engineer at the Patna Water Board functioning under Patna Municipal Corporation Act, 1951. Initially both the incumbents were recruited by the Water Board itself. C.W.J.C. No. 8562 of 1996 was filed because rules were framed, on the basis of which the promotional avenue on the post of Chief Engineer, Patna Water Board, in effect, left the field of eligibility to civil engineers only.

2. The occasion for framing the rules arose when Ajay Kumar Sinha filed C.W.J.C. No. 946 of 1993 (in this case Rabindra Kumar was Respondent No. 7) seeking quashing of appointment of Rabindra Kumar on the ground that the latter was junior and the Petitioner should have been considered and given posting as Chief Engineer instead. The learned Judge deciding the writ petition was of the view that, firstly, the post would need to be sanctioned and secondly, there were no guidelines before the Respondents to go through the process of selection. That

there were no rules is accepted by all without issue. Earlier, the functions of engineers at the Patna Municipality were discharged by State engineers. Subsequently, the municipality expanded to a City Corporation known as the Patna Municipal Corporation.

3. The appointment of Rabindra Kumar, thus, was quashed on Ajay Kumar Sinha's writ petition. The Respondents including the State-Respondents were required to frame rules within a period of three months. In the interregnum period the learned Judge directed that the post of Chief Engineer, Patna Water Board be filled up by deputation from a suitable officer from the Public Health and Engineering Department, Government of Bihar. This judgment on C.W.J.C. No. 946 of 1993 is dated 23rd January, 1996. Now Rabindra Kumar was aggrieved as his appointment had been quashed. Rabindra Kumar, thus, filed a Letters Patent Appeal Bearing No. 217 of 1996 (Rabindra Kumar v. The State of Bihar and Ors.). This is the appeal under consideration.

4. As a consequence of the judgment of C.W.J.C. No. 946 of 1993 dated 23rd January, 1996 rules were framed by the State Government. Under these newly framed rules Rabindra Kumar was considered and appointed as Chief Engineer. The Letters Patent Appeal filed by Rabindra Kumar, in so far as he is concerned, is virtually academic. The High Court may have quashed his appointment in the writ petition but he ultimately succeeded as he was selected to be posted as the Chief Engineer.

5. Now comes Ajay Kumar Sinha, who is getting caught in his own exercise. Having succeeded in quashing the appointment of Rabindra Kumar, sans the rules, found himself out of field of eligibility as he could not be considered to become a Chief Engineer when the rules were ultimately framed. The contention is that Rabindra Kumar is a civil engineer and the field of eligibility has been left for civil engineers only. He says that mechanical engineers have been left out and engineers other than civil engineers are out of the field of eligibility. He claims discrimination under Article 16 of the Constitution. The contention is that except the civil engineers all other engineers will be left out and see stagnation as they would never rise to the post of a Chief Engineer. This is arbitrary it is contended.

6. When the High Court had directed (C.W.J.C. No. 946 of 1993) that rules be framed, rules should have opened avenues for engineers so employed by the Water Board of the Patna Municipal Corporation. That would have been fair.

7. This Court will not tell the State of Bihar or the Patna Municipal Corporation as to what should be its sanctioned strength for engineers as this would need to be worked out itself. But a clear reading of Section 62 under which the rule has been made, obliges the State Government to take into account the functions of the municipal authorities which are enumerated in the very next section i.e. Section 63. Thereafter, there is much more which has been added to the functions u/s 63A. The last aspect is important. As the Constitution of India was

being amended by the 73rd and 74th amendments, Schedule 12 meant for municipalities referred to certain functions as an obligation of the municipal authorities. Noticing Schedule 12 in the Constitution, the State Government was quick to amend the Act to provide by Section 63A additional functions. Between Section 62 and Section 63A read with Schedule 12 of the Constitution, there are much more functions which the Patna Municipal Corporation is obliged to discharge than when the Act was enacted in 1951. All these functions may not be discharged exclusively by civil engineers. In today's context after the amendments to the Constitution municipal functions are much wider than in 1951. There is yet place for Engineers whether Civil, Mechanical or Electrical.

8. The first aspect which strikes the Court is to strike the rules. But as far as possible the Court ensures that a rule be saved in its workability instead of quashing the rules. All that the rules need is updating taking into account the Constitution which enlists the subjects of municipal functions in the Twelveth Schedule. There is place for other engineers as plans will be made and executed by the District Planning Committees under Article 243ZD. The rest, on the mechanics of the number of posts and the types of engineers from which Chief Engineers will be selected is a matter for the State Government. It would be appropriate that the rules be updated within two months from today in the light of the observations made by the Court in this order. Otherwise, the rules are not compatible with municipal functions and subjects referred to in the Twelveth Schedule of the Constitution.

9. The writ petition succeeds in part in the light of the observations made in this order. The Letters Patent Appeal, as the Appellant enjoys the promotion and position rightly or wrongly, is virtually *redu(sic)dant*.