
(2016) 12 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4222 of 2016

Sanjay Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 13, Section 2(b)
Constitution of India, 1950 — Article 226

Citation : (2017) 1 BBCJ 328 : (2017) 1 BLJud 349 : (2017) 1 PLJR 606

Hon'ble Judges : Mr. Hemant Gupta and Mr. Vikash Jain, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Kumar and Mr. Ravibhushan Verma, Advocates, for the Petitioners; Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates, for the Respondent No. 6

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. (Oral) - The challenge in the present writ petition is to the reservation contemplated in Section 2(b) of Bihar Panchayat Raj Act, 2006 (Bihar Act No.6 of 2006) wherein, the "Backward Classes" means and includes the castes mentioned in Schedule-I of Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 (hereinafter referred to as "Reservation Act, 1991").

2. The argument of learned counsel for the petitioner is that the Reservation Act, 1991 defines "Other Backward Classes" which includes extremely backward; other backward class, and women of backward classes. The castes have been mentioned in two Schedules-Schedule-I and Schedule-II. Schedule-I contains the caste of extremely backward classes and Schedule-II contains the castes falling in the other backward classes. It is, thus, contended that the Legislature has defined the backward classes into three categories in Reservation Act, 1991 whereas in the Bihar Panchayat Raj Act, 2006 only one categories of persons, who have been mentioned in Schedule-I, i.e. extremely backward classes, have

been given benefit of reservation. It is also contended that while enacting Bihar Panchayat Raj Act, 2006, the State has not consulted Bihar State Commission for Backward Classes, constituted under Bihar State Commission for Backward Classes Act, 1993.

3. Section-2(i), (j) and (k) of Reservation Act, 1991 reads :

(i) "Other Backward Classes" shall have reference to extremely Backward, Backward class and Women of Backward Classes;"

(j) "Extremely Backward and Backward Classes" means and includes those classes which have been specified in Schedules I and II of the Act.

Explanation-If any of the classes enumerated in Schedule I and Schedule II appended to the Act, is notified under any Presidential Order as Scheduled Caste or as Scheduled Tribe, such class shall be deemed to have been deleted from the said Schedules.

(k) "Women of Backward Classes" means and includes women of Scheduled Castes, Scheduled Tribes, extremely Backward and Backward Classes."

4. The Reservation Act contemplates reservation in public employment under the State of Bihar whereas the Bihar Panchayat Raj Act, 2006 provides for reservation of seats for the backward classes in the Panchayats. Section-2(b) and 13 of Bihar Panchayat Raj Act, 2006 reads :

"Section 2(b) "Backward Classes" means and includes the list of Backward Classes of citizens specified in Annexure-1 of the Bihar Reservation of Vacancies in Posts and Services (for SC, ST and other Backward Classes) Act, 1991 (Bihar Act No.3, 1992)

Section-13. - (1) In every Gram Panchayat, as nearly as but not exceeding fifty percent of the total seats of members of Gram Panchayat shall be reserved for

(a) Scheduled Castes;

(b) Scheduled Tribes; and

(c) Backward Classes.

5. Learned counsel for the petitioner submitted that Reservation Act, 1991 has provided reservation for the backward classes and extremely backward classes whereas the Bihar Panchayat Raj Act, 2006 does not provide for reservation to the backward classes as it only provides reservation to the persons who belong to Schedule-I, i.e. extremely backward classes.

6. It is argued that the purpose of reservation, which was granted by Reservation Act, 1991 has not been given effect to while providing reservation under the Bihar Panchayat Raj Act, 2006. It is further contended that Section-13 of the Bihar Panchayat Raj Act, 2006 provided for reservation for backward classes which will exclude the extremely backward classes, thus the provisions of the

said Act are contradictory.

7. We have heard learned counsel for the parties and find no merit in the present writ petition.

8. The purpose of Reservation Act, 1991 is reservation in public employment creating category of extremely backward classes, backward classes and women from the backward classes. The extremely backward classes find mention in Schedule-I whereas the backward classes find mention in Schedule-II. The Bihar Panchayat Raj Act, 2006 provides for the reservation in the Panchayat for the purpose of elections for the extremely backward class as described in Schedule-I of the Reservation Act. It means that the State has consciously decided to grant benefit of reservation to extremely backward classes and not to backward classes as per Schedule-II of Reservation Act, 1991. Since the provisions of the Statute are clear and categorical, therefore, by applying any external aid, this Court cannot find there is any omission in the Statute. The Courts do not have jurisdiction to fill the gaps, in view of the principle of "casus omissus". The Supreme Court in a judgment reported as *Babita Lila v. Union of India*, (2016) 9 SCC 647, held as under :-

"63. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not fill the gaps in statute, their functions being *jus discre non facere* i.e. to declare or decide the law. In reiteration of this well-settled exposition, this Court in *Union of India v. Dharamendra Textile Processors*, (2008) 13 SCC 369, had ruled that it is a well-settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in *Stock v. Frank Jones (Tipton) Ltd.*, (1978) 1 All ER 948, that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that rules of interpretation do not permit the courts to do so unless the provision as it stands is meaningless or doubtful and that the courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the court except in the case of clear necessity and that reason for, is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently, this Court amongst others in *Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd.*, (2015) 9 SCC 209, had propounded that when the legislative intention is absolutely clear and simple and any

omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in *Sree Balaji Nagar Residential Assn. v. State of T.N.*, (2015) 3 SCC 353, to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment."

9. Thus we find that the provisions of the Bihar Panchayat Raj Act, 2006 are not found to be suffering from any illegality only for the reason that the definition of the backward classes does not include Schedule-II as appended in Reservation Act, 1991.

10. Still further, we find that the reservation provided under Section-13 of the Bihar Panchayat Raj Act, 2006 is for the backward classes. The backward class has been defined in Section-2(b) of the Bihar Panchayat Raj Act. Thus, we find that there is no contradiction in the policy of reservation as specified under Section-13 of the Bihar Panchayat Raj Act, 2016.

11. The argument that State Government has not sought the recommendations of the Commission is again not tenable. The Bihar State Commission for Backward Classes Act, 1993 (Bihar Act 12 of 1993) defines the "Backward Classes" to mean such backward classes other than scheduled castes and scheduled tribes specified or to be specified in the schedules appended to Bihar Act-3 of 1992. The said Act contemplates its consultation, when the extent of reservation is to be modified or varied. The reservation carved out in Reservation Act, 1991 has not been modified or varies in any manner. The reservation for appointment to the civil posts continues in terms of Reservation Act, 1991, but in respect of election to Panchayat, the reservation has been granted only to extremely backward classes. It is a classification carved out by Legislature. Such classification does not contravene the Constitution.

12. In view thereof, we do not find that the reservation contemplated in the Bihar Panchayat Raj Act, 2006 can be said to be illegal on any ground.

13. Consequently, the present writ petition is dismissed.