

(2008) 07 PAT CK 0072
In the Patna High Court
Case No : LPA No. 385 of 2008

Shiva Balak Choudhary and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Constitution of India, 1950 — Article 145, 317, 317(1), 317(2)

Citation : (2008) 3 PLJR 474

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Naresh Dikshit, for the Appellant; Kameshwar Pd. Gupta and Sanjay Pandey, for the Respondent

Final Decision : Dismissed

Judgement

1. Shiva Balak Choudhary-appellant no. 1 came to be appointed as Member, Bihar Public Service Commission, on 19th August, 2002. Devnandan Sharma-appellant no. 2 was appointed as Member, Bihar Public Service Commission, on 8th August, 2002. Both these appellants are accused in three First Information Reports (being Vigilance P.S. Case No. 19/2005, 10/2006 & 12/2006). Both of them are facing trial in the court of Special Judge (Vigilance), Patna in these criminal cases. In this situation, the Governor of Bihar made a request to the President of India for their removal under Article 317(1) of the Constitution of India. Upon receipt of the proposal from the Governor of Bihar, the President of India made a reference under Article 317(1) to the Supreme Court being Reference Case No. 1 of 2007. That the said reference is pending before the Supreme Court and notices to all concerned in the reference have been served is not in dispute.

2. After reference having been made by the President of India to the Supreme Court under Article 317(1), the Governor decided to suspend the appellants in exercise of the powers conferred on him under Article 317(2) of the Constitution of India and, accordingly, a notification was issued on 5th February, 2008

suspending the appellants as Members of Bihar Public Service Commission with immediate effect.

3. The appellants challenged the notification dated 5th February, 2008 in a writ petition being CWJC No. 3291 of 2008 Being reported in this issue at Pg. 468 [Shiva Balak Choudhary and Another Vs. The State of Bihar and Others,]. The said writ petition has been dismissed by the single Judge on 7th April, 2008. It is from this order that the present intra-court appeal has been preferred.

4. Mr. Naresh Dikshit, counsel for the appellants, did not dispute the power of the Governor in suspending the Members of the State Public Service Commission under Article 317(2) of the Constitution of India after the reference having been made by the President of India to the Supreme Court under Article 317(1). However, his contention is that before the power of suspension under Article 317(2) is exercised, the Governor must have had the supporting report of the Supreme Court which he did not have and that renders the order of suspension bad in law. He heavily relied upon a decision of the Supreme Court in the case of In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission, . His main emphasis was on the observations made by the Supreme Court in paragraph-3 of the report which reads thus:

"Strict judicial procedure contained in Article 317(1) and the Rules framed thereunder by this court and the requirement that the President must have the supporting report of the Supreme Court in order to suspend or remove the Chairman or member of a Public Service Commission are undoubtedly intended to also provide safeguard to the Chairman and members of the Commission against motivated or wrong charges of misbehavior, in the larger interest of the administration of the civil services in the country."

5. We deem it proper to refer to Article 317 of the Constitution of India as it is which reads thus:

317. Removal and suspension of a member of a Public Service Commission.-(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in anyway in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehavior."

6. That the object of Article 317(1) is to immune Public Service Commission from political pressure is beyond doubt. Article 317(1) intends to give better protection to a Chairman and Member of Public Service Commission in the matter of removal on the ground of "misbehaviour" as the determination is vested in the highest Court.

7. We are presently concerned with the exercise of the power of the Governor under Article 317(2). Article 317(2), inter alia, empowers the Governor in the case of a State Commission to suspend the Chairman or any other member of the Commission after a reference has been made to the Supreme Court under clause (1) of Article 317 until a final order is passed by the President upon receipt of the report of the Supreme Court on such reference. The supporting report of the Supreme Court for exercise of power of suspension under Article 317(2) does not appear to be sine qua non. The power of suspension is exercisable only after the reference has been made. The reference is made by the President, on being prima facie satisfied as to an allegation of misbehaviour. The life of the order of suspension under Article 317(2) is until the order is passed by the President on receipt of the report of the Supreme Court on such reference.

8. Upon careful reading of the judgment of the Supreme Court in the case of Or. Ramashray Yadav, it appears that exercise of the power of suspension under Article 317(2) was not at all in issue. The observations made by the Supreme Court in paragraph-3 regarding the requirement of the supporting report of the Supreme Court is referable to removal under Article 317(1), although expression "suspend" has also been used.

9. We, thus, find no merit in the submission of the counsel for the appellants that the power of suspension could not have been exercised by the Governor in the

absence of the supporting report of the Supreme Court. The appeal has no merit. It is, accordingly, dismissed.