

(1997) 08 PAT CK 0056
In the Patna High Court
Case No : M.J.C. No. 1993 of 1996

Shri Krishna Sahai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Citation : (1997) 2 PLJR 624

Hon'ble Judges : Dharmpal Sinha, J;B.P. Singh, J

Bench : Division Bench

Judgement

1. We are at our wit's end. At times we are tempted to raise our hands in despair, but we are reminded of our duties under the Constitution and our oath to uphold the same. The citizens of this Nation are guaranteed the right to life under the Constitution, which has been judicially recognised not merely as a right of existence, but a right to live in a civilised society with all the benefits of technological and other advances made, to the extent possible. A citizen is entitled to claim that he must live in surroundings which provide him the facilities for clean and hygienic living so that his life is protected from diseases and epidemics, and the State provides to him in reasonable measure the benefits of the progress of science and civilisation that it is expected to provide at the end of the twentieth century, to make his life worth living.

2. The citizens of Patna, as also of other cities of this State, have been relegated to the state of nature if it rains, the city is flooded converting the city into a veritable hell, and if it does not, a famine situation is created, so much so that even drinking water is scarce. The State and its instrumentalities have shown a degree of apathy which can be termed as criminal indifference. Notwithstanding orders passed by the Courts, they have done little to shield the citizens from the miseries to which they have been exposed. There is no drainage system worth mentioning for the city of Patna. If there is any, it is not visible, because in the rainy season the roads act as drains making the movement of traffic impossible. The rain water drains that existed have been filled up by encroachers without any

resistance from the authorities concerned. Similar is the case with the sewerage system of this city, which boasts of a Municipal Corporation, apart from the Bihar Jal Nigam, earlier known as the Biswas Board. What these bodies do, apart from providing employment, no one knows. In the result, the city of Patna can claim, without fear of contest, to be the filthiest State capital of this country. The situation is further aggravated by unauthorised structures which have been erected all over the city with the Patna Regional Development Authority being a mute spectator. In its over two decades of existence, it has not so far even fulfilled its statutory duty of drawing up the requisite plans under the Act.

3. In a nutshell, this State suffers not so much from non-administration, as it does from non-administration. On account of its inaction, a stage has been reached when even for routine matters a citizen has to knock the doors of the Courts resulting in burdening the docket of this Court with available litigation. The Hob son choice before this Court is between Idea the citizens to fend for themselves, and to entertain the type of litigation which in normal circumstances, this Court would not have entertained.

4. In the instant contempt petition the Petitioners have prayed for initiating contempt proceeding against the contemnors for not carrying out their undertaking given to this Court by opposite party Nos. 2 and 7 on 10.5.1996 in C.W.J.C. No. 3639/96 and C.W.J.C. No. 5512/95. It is the case of the Petitioners that facts have been misrepresented before this Court, and this Court has been misled into believing that action is being taken by the Biswas Board and the Patna Municipal Corporation to clean the choked drains of Ward Nos. 3 and 8 of the Patna Municipal Corporation so as to give some respite to the residents of the locality from the phenomenon of water logging which has been causing constant annoyance to the residents of the locality and exposing them to the danger of epidemics and infections on account of unhealthy surroundings. While this Court was seized of the matter and the opposite parties were called upon to show cause, the unprecedented rains in the capital exposed the hollowness of the assertions made by the opposite parties. Not only the areas in question, but virtually the entire city of Patna was water logged and the absence of storm water drains and underground sewerage system became apparent. In Anr. proceeding before this Court appropriate orders were passed for immediate action, and to some extent the matter has been brought under control. However, the complaint of the Petitioners is that so far as their localities are concerned, large portions thereof are still water logged, and not only the roads but even inside the houses water has entered and for the last few weeks the conditions has remained the same. He submits that one had only to imagine the plight of the residents of the locality and the hellish condition in which they were surviving. The opposite parties have not taken adequate steps so far to render any help to them. The opposite parties do not deny the fact that some parts of the areas in question are still water logged. It, therefore, appears to us that at this stage it is necessary to give directions to the authorities to take appropriate steps so as to provide some relief to the residents of the locality.

5. Counsel for the Petitioners submits that in the areas in question, namely, Ward Nos. 3 and 8 of the Patna Municipal Corporation there has been water logging for the last about four years and the situation is the same even before the on-set of monsoon. After the monsoon rains the situation becomes worse. The entire area comes under knee-deep water, and for the last over a month the residents of the two areas are residing in their houses which have knee-deep water. Apart from the hardship suffered by the residents, there is fear of spread of epidemic which may further add to the miseries of the residents. The water has entered the residential apartments in the locality. The Biswas Board and the Patna Municipal Corporation as well as the Government of Bihar are mere spectators, and whatever be their claim they have not been able to provide any relief to the Petitioners. Similar is the suffering by the residents of other localities of the city of Patna, and the real cause for their suffering is the same, namely, the poor maintenance, virtually non-maintenance, of the drainage system of the city which includes storm water drainage and sewerage system. The sewerage pipes as well as the other drain pipes are lying choked. The main drain and the subsidiary drains were earlier maintained by the Patna Municipal corporation and the Biswas Board. These bodies failed to discharge their duties and drains were never cleaned, so that over the years they have got choked. Their apathy towards their statutory responsibilities must be condemned in the strongest terms. When such bodies are not able to perform their statutory functions for decades together causing untold miseries and sufferings to the people whom they are required to serve, one may very well consider the need for the very existence of such bodies which have not proved useful to the people of the State. When we had taken up the matter, last year we expected that at least before the on set of the monsoon this year some work may be done and the unfortunate chapter may not be repeated. We are, sorry to record that despite our best efforts, and despite all the assurances given to us, the opposite parties did no useful work and the situation today remains the same as it was last year. We have in our orders recorded in this proceeding, the assurances given to us even by the Commissioner-cum-Secretary of the Urban Development department Mr. Subramaniam, who appeared before us in person unfortunately his assurances have been proved to be hollow, and though he still gives us the same assurance, we are doubtful if the Government really intends to do anything in the matter. It is that despite the existence of civic bodies and other specialised agencies underground drains have not been cleaned for decades with the result that they have got choked. Obviously, therefore, water logging cannot be avoided unless the drains are made functional. One can well imagine the plight of the residents of the city where drainage system has become non functional. The civic amenities provided to the citizens of this State are not such as are expected in the last part of the twentieth century. The quality of life that they can reasonably expect to enjoy in a civilised society which claims to have made great advances in the fields of science and technology is absent. As we have observed earlier if fruits of such progress made in the field of science and technology are not enjoyed by the citizens who are left to the vagaries of nature, technological advancement has no

meaning to the citizens who suffer water logging when it rains, and shortage of drinking water when it does not rain. The Patna Municipal Corporation and the Biswas Board, if they cannot ensure that rain water shall be drained out, and sewerage pipes shall carry the sewage to its destination do not justify even their existence. It is primarily on account of their indifference that the city of Patna is one of the filthiest capitals of the country.

6. We are now told that the underground drainage system including rain water, drainage and the sewerage system has been put under the control of the Patna Municipal Corporation, but the sump and pumping stations are controlled by the Biswas Board. Obviously, the underground pipes have got to be cleared and only thereafter the water can be pumped out from the pumping stations. No useful purpose will be served by pumping out the water from one locality and throwing it to another locality, because that other locality then faces the same problem as was faced by the locality from where the water has been pumped out. The law enjoins upon the Patna Municipal Corporation to maintain a certain standard of cleanliness and hygiene in the city of Patna and, therefore, the Patna Municipal Corporation cannot plead helplessness in such situations. It is for the Patna Municipal Corporation to find ways and means of fulfilling the obligations cast upon it by law. The duties cast upon it must be performed by it and the fundamental rights guaranteed to the citizens must be enforced.

7. We, therefore, direct the Patna Municipal Corporation to take whatever steps it may consider necessary so as to pump out the water from the water logged areas of the city and clear the locality of filth etc. which may have collected within ten days from today. It was submitted that the task is stupendous and would require stupendous effort. If the Patna Municipal Corporation would have been careful, and not oblivious of its obligations under the law, such a situation would have never arisen. It is primarily on account of its own fault that we are today faced with the situation where a large number of citizens are marooned in their own houses with filth floating all over and no assurance of help from any quarter. Drastic situations call for drastic solutions which can be achieved by drastic efforts. We, therefore, direct the Biswas Board and the Patna Municipal Corporation to do all that is necessary and to see to it that no part of the city of Patna is water logged after ten days from today.

8. The pumping houses are still under the control of Biswas Board. The Biswas Board must extend its fullest-cooperation to the Patna Municipal Corporation. Each and every pump in all the pumping houses should be made operational. This order is being passed in the presence of Managing Director of the Biswas Board and the Administrator of the Patna Municipal Corporation. We have made it clear to them that we shall entertain no excuses for not complying with this order. If we find that this order has not been implemented in its letter and spirit, we shall hold them personally responsible.

9. Mr. Subhramaniam, Commissioner-cum-Secretary, Urban Development Dept. is also personally present in Court. We expect the Government to see to it that

for lack of co-operation between different authorities public interest may not suffer. At the same time the Government must see to it that the authorities have sufficient funds to enable them, to make all efforts to meet the situation as it exists today. Mr. Subhramaniam assures us that for paucity of fund the work will not suffer and the Government will take the matter in all seriousness and see to it that the Biswas Board and the Municipal Corporation do all that is necessary to deal with the situation. We remind the authorities that the duties cast upon them by law can be enforced by this Court by issuance of a writ of mandamus. Their default in the performance of the statutory duties will be more seriously viewed if on account of such default the fundamental rights of citizens are infringed. We may also remind the authorities that if on account of their inaction fundamental rights of the citizens are breached, the authorities may expose themselves to the liability of compensating the sufferers. We, therefore, warn the authorities that if ultimately it is found that there has been no change of attitude, and that this order has not been complied with on account of their inaction, they shall also expose themselves to an action for contempt of Court, which we are not taking today, though on facts of this case, we would have been justified in initiating contempt proceedings immediately. We feel that it is more important that the water logged areas are cleared, than to punish the alleged contemnors. We have tried to awaken the authorities from their deep slumber, and if we have used strong terms, that is only to emphasis that if such words also go unheard, what may follow may be strong action.

10. Let this matter be listed again on the top of the list on 20th August, 1997 Personal appearance of Mr. Subhramaniam, Commissioner-cum-Secretary, Urban Development, and the District Magistrate, Patna, is dispensed with. Let a copy of this order be given to the counsel for the Patna Municipal Corporation and Biswas Board.