
(1998) 05 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 6192 of 1997

Shyam Kishore Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-1998

Acts Referred:

Citation : (1998) 3 PLJR 596

Hon'ble Judges : B.P. Singh, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : I.K. Sharan, Jay Nandan Singh and Shyam Kishore Sharma, for the Appellant; G.R. Roy, R.P. Singh, for P.R.D.A., Shiv Kirti Singh, for P.M.C. and Tarkeshwar Dayal, for Jal Parishad, for the Respondent

Judgement

1. Heard the parties

2. Pursuant to our order dated 24.4.1998, Mr. Narayanan, Secretary, Department of Urban Development, in absence of Finance Commissioner, Additional Finance Commissioner Shri B.P. Sharma, Vice Chairman, Patna Regional Development Authority, District Magistrate, Patna Managing Director, Jal Parishad, Chief Engineer, Jal Parishad, former Superintending Engineer, Jal Parishad, Executive Engineer, Works Development, Jal Parishad, Chief Engineer, Housing Board and Administrator, Patna Municipal Corporation have appeared in person.

3. This case was instituted on 15.7.1997 on the basis of a petition filed by a member of legal profession, namely, Shri Shyam Kishore Sharma, by order passed by a bench presided over by Hon'ble the Chief Justice to which one of us, B.N. Agrawal, J. was a member, as it was reported to us that there had been water logging in the whole city of Patna during the last rainy season to the detriment of lives of residents of the town of Patna. We directed the Chief Secretary, Government of Bihar, Divisional Commissioner, Patna, the then Secretary, Urban Development Department, Administrator, Patna Municipal Corporation, District Magistrate, Patna, and Managing Director, Bihar Water Board to appear before us Pursuant to our direction, they did appear. Apart from them,

Finance Commissioner and Head of the Electricity Board also appeared.

4. The officers who appeared before this Court had no option but to state that civic body had no infra-structure to deal with the situation for removing water logging. Therefore, various pumps were requisitioned from different places. At one stage, we proposed to call army as it appeared to us that it was not possible for civic body to deal with the situation. The learned Additional Advocate General No. III upon our order sent a request to the Central Government and reply was received from Lucknow, Patna and Danapur that even army may not be able to deal with the situation to our full satisfaction. Ultimately, we gave 20 directions to the State and officials of Civic Body for removal of water logging to save lives of the people so that there may not be epidemic. After passing order, we had to monitor it and not only monitoring but we had to give push also and we are sorry to say that only after that water could be drained out, which had taken atleast 15 days in removal of water logging from most of the areas, though not from all areas.

5. Thereafter Hon'ble the Chief Justice constituted this Bench to hear this writ application. The case was placed before us for the first time in August, 1997, On 29.8.1997, this Bench passed a detailed order giving various directions to Jal Parishad, Patna Municipal Corporation, Patna Regional Development Authority and District Magistrate, Patna for taking steps for cleaning drains and revamping sewerage system as well as various pump houses in the town of Patna. When we asked the authorities to clean Bakergunj drain, it was reported to us that there have been various encroachments. We directed to get all the encroachments removed and thereafter clean the entire drain and make the same functional.

6. Though we passed the order on 29.8.1997, but it appears that nothing was done excepting that some steps were taken for removal of the encroachments from Bakergunj drain, but the matter was left half way and thereafter nothing was done. For a period of eight months, it appears that none of the authorities had discharged its statutory and legal obligation inspite of clear cut direction by this Court in the order dated 29.8.1997, referred to above, and several other orders.

7. It appears that we took up the matter again on 3.4.1998 and wanted to know as to how far our orders have been implemented. The aforesaid authorities could not say anything as to why our orders have not been complied with and why they remained sitting idle. No satisfactory explanation at all has been furnished before us by officers, who are present before us, as to why our orders were not complied with and they remained completely inactive. It appears that only on 3.4.1998 when we have taken up the matter, the officers have woken from deep slumber. From the attitude of the officers, it appears that they do not want a simple order from this Court. They want monitoring but that too is not enough, they want push also for implementing the order. In view of the aforesaid facts disclosed from sad state of affairs, so far officers of Civic body are concerned, it is very painful to say that for every matter the Court has to monitor and give a

push, but that is also not sufficient, the work is done only if contempt proceeding is initiated. Prima facie, we are not satisfied with the explanation orally furnished before us by officers present here in Court.

8. The Administrator, Patna Municipal Corporation, who appeared before us, gave us list of 9 big drains in the town of Patna apart from 9 smaller drains out of which, within a period of 8 months, the authorities have not been able to clean even a single drain (Bakergunj drain), with regard to which we gave positive direction. This shows complete inaction on the part of the officers of Civic Body in discharging their legal duty inspite of categorical order by this Court.

9. The whole purpose of entertaining this public interest litigation was first to remove water logging from the town of Patna and, secondly, to prevent its recurrence in the next rainy season which is likely to onset by 15th June and only about a month is left out.

10. From the aforesaid facts, prima facie it appears to us that officers present in Court have violated the various orders of this Court. At one stage, we proposed to initiate contempt proceeding against all the officers who are present here and any other person who is found guilty for violation of our orders, but for the present, we do not propose to initiate contempt proceeding. We are giving one more chance to the officers to purge from contempt which they have already committed according to the tentative view which we have expressed.

11. Mr. Narayanan, Secretary of the concerned department, has assured us that he will take all steps for desilting all drains, cleaning sewerage pipes and revamping all pumping stations, pumping sets and sump houses. He has further assured that services of more men will be requisitioned from other departments of the Government or by employing persons from open market on temporary basis. Though Mr. Narayanan assures that he would succeed in getting the work done, but having regard to their past performance, we have great doubt that officers of Civic Body will be able to discharge the aforesaid legal obligation referred to above. We feel that services of some technical agency either of Central Government from Delhi Administration having expert knowledge in the matter should be requisitioned to make survey of the entire work which may suggest ways and means to deal with the problem and record its opinion whether officers of these civic bodies will be able to undertake the work or not.

12. Mr. Narayanan is directed to contact Delhi Administration or Central Government or any other Agency having expertise knowledge in the matter for the aforesaid purpose, which must be undertaken within 48 hours. One thing is clear that entire work has to be taken up on war footing.

13. We have been so informed that there have been encroachments upon various drains as a result of which flow of water into drains has been impeded. The Administrator, Patna Municipal Corporation is directed to report to the District Magistrate about such encroachments affecting drains. The District Magistrate is directed to depute Magistrates for undertaking the aforesaid work in the manner

indicated in our order passed on 29.8.97 and she herself shall also remain present, if necessary. The Senior Superintendent of Police is also directed to render all possible help as required by officers who are implementing the orders of this Court passed in this writ application.

14. We may clarify that we have not only directed to remove encroachments which are affecting drains but we are directing to remove all encroachments including Khatahs in case they affect flow of drain water and result in choking of drain pipe and direction in order dt. 29.8.97 shall apply for removing such encroachment also. We have been told by Administrator, Patna Municipal Corporation that in every ward there is one Inspector and more than one Supervisor. For getting the drains cleaned in the respective wards, the Inspector and Supervisors shall be personally held liable. They shall be also responsible for removal of garbage daily. If for that purpose, more Tractors are required, the Administrator, Patna Municipal Corporation shall send requisition to District Magistrate, Patna, and the same shall be immediately attended to. In case, it is reported to us that any Ward Inspector or Supervisor is not discharging his obligation, he will be deemed to have committed breach of this order and shall be liable to be hauled up for contempt of Court.

15. On the next date, we shall also consider the desirability of asking the members of the bar to regularly make inspection of the big drains and other drains in different areas of this town and report to this Court in relation to the work already undertaken.

16. We hope and trust that residents of the concerned locality would not only co-operate the authorities in implementing the order of this Court but would report to this Court in case work in their respective localities is not carried out properly by filing an unaffidavited petition before Shri P.K. Sinha, Registrar (Vigilance) and if and when such petition is filed the matter should be brought to our notice on the date of its filing by the Registrar (Vigilance). Let a copy of this order be sent to Shri P.K. Sinha, Registrar (Vigilance) for needful.

17. By order passed by us on last Friday in M.J.C. No. 3243 of 1997, we directed the Finance Commissioner also to appear in Court. We are told that the Finance Commissioner has gone abroad and is likely to come back by 20.5.1998. Therefore, in his absence, Shri B.P. Sharma, Additional Finance Commissioner has appeared pursuant to our order who has informed the Court that whatever funds are required for undertaking the aforesaid work, the same shall be made available to the concerned authority immediately so that the work may not suffer.

18. Let personal appearance of Mr. Narayanan, Commissioner-cum-Secretary, Urban Development be for the time being dispensed with on personal ground and in his place Shri Baleshwar Das, Additional Secretary, who will be holding charge of his office in his absence, shall appear in Court on the next date.

19. For the time being, we dispense with personal appearance of Vice- Chairman, P.R.D.A. Let this and other analogous matters be placed for further consideration

on 11.5.98 at 1.30 A.M., on which date, all officers who are present today except those stated above, shall remain present in Court.

20. Let a copy of this order be handed over to learned Counsellor the Petitioner, learned Addl. Advocate General No. III, counsel appearing on behalf of Patna Municipal Corporation, Jal Parishad; P.R.D.A. and Housing Board.