
(2003) 01 PAT CK 0079
In the Patna High Court
Case No : L.P.A. No. 65 of 2003

State of Bihar and Others

APPELLANT

Vs

Janardan Rai and Another

RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0079

Judgement

Ravi S. Dhavan CJ and R.N. Prasad, J.—After the order of the Supreme Court on an appeal by the State of Bihar itself, when the SLP was disposed of with a direction to the State of Bihar to implement the resolution dated 27 April, 1977 in the manner it is meant to be implemented, the issues stood resolved.

2. On record are circumstances that in the earlier set of litigation the defence in the writ petition and subsequently whether on an appeal under Letters patent or before the Supreme Court the issues were taken by the State of Bihar through the Department of Education. After the order of the Supreme Court the issues were terminal. Now, issues are being presented as if the Department of Education and the Department of Finance may be at issues. Details are on record and it will not be appropriate for the Court to record these details. Effort, truly of the State Government, should have been to even out the creases to resolve the dispute after the litigation has been drawn to a close on the disposal of the SLP of the State of Bihar.

3. If the circumstances, should there be issues between the Department of Education and the Department of Finance, then the legal entity under the Constitution of India is the State of Bihar and not the departments of the Government.

4. If such a conflict may exist between the departments of Government within, then, the Court can do not more than guide the Government on two decisions of the Supreme Court. The first decision is dated 11 September, Municipal Corporation of Greater Bombay and others Vs. Dr. Sushil V. Patkar and others, and the second dated 11 October, 1991, in the matter of Oil and Natural Gas

Commission and Anr. v. Collector of Central Excise. The text of the first order is reproduced :

ORDER

(1) These are applications for restoration of Civil Appeal Nos. 2058-59 of 1988 which on February 2, 1989 were permitted to be withdrawn at the request of the appellants.

(2) The withdrawal was on the basis of the instructions issued by the Ministry of Petroleum and Natural Gas vide their letter dated October, 3, 1988, Later on September, 28, 1989 the Chairman of the ONGC was intimated to the following effect :

"Please refer to our DO letter No. DBC/Acctts/111/9/87 dated June 24, 1989 regarding excise duty on lean gas supplied to consumers ex-Uran. The suggestion made by you has been examined and in view of the fact that CBEC is not prepared to withdraw the demand and refer the matter to arbitration, ONGC may approach the Supreme Court for appropriate relief."

On the basis of the later instructions, these applications are said to have been filed.

(3) This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of Counsel, Court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present case appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet-Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

(4) The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet Secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991."

5. The next decision is also between the same parties, (1995 (Supp. (4) Supreme Court Cases 541). For the benefit of the State of Bihar the text of this order is also reproduced :

ORDER

(1) We are happy to find that the Cabinet Secretary has taken the appropriate initiative as indicated in our order dated 11-9-1991 and has reported to us that the dispute between the Government Department and the public sector

undertaking of the Union of India has been settled. In that view of the matter no further action is necessary on the petition.

(2) In his report the Cabinet Secretary has stated :

"I would also like to state that the Government respects the views expressed by his Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on Counsel, Court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

(3) We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

(4) It shall be the obligation of every Court and every Tribunal where such a dispute is. raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

(5) The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1-1-1992.

(6) Our direction may be communicated to every High Court for information of all the Courts subordinate to them."

6. After having seen the aforesaid two decisions of the Supreme Court, learned AAG 2 appearing on behalf of the State of Bihar submitted, upon instructions from the Chief Secretary, upon instructions from the Chief Secretary, present, that the matter may be adjourned for four weeks. The only anxiety of the Court is that the State of Bihar will ensure that the order of the Supreme Court is compromised. The orders of the High Court and the Supreme Court have

attained finality to be honoured whatever be the solution.

7. Put up after four weeks, in the supplementary list.

8. Let a copy of this order be given to AAG 2.