
(2003) 12 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 13719 of 2003

Uday Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Citation : (2004) 3 PLJR 121

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Jitendra Kumar Roy, in C.W.J.C. No. 13719 of 2003, Mihir Kumar Jha, in C.W.J.C. No. 13741 of 2003 and Kamal Nayan Chaubey, in C.W.J.C. No. 11372 of 2003, for the Appellant; Mahesh Prasad, for State in C.W.J.C. No. 13719 of 2003 and Nirmal Kumar Sinha, for State in C.W.J.C. Nos. 13741 and 11372 of 2003, for the Respondent

Judgement

1. Today the Court is not recording any details because if this were to be done then all the conflicts which have taken place between the three District Magistrates and representatives of the third tier of the government whether the Panchayal Samiti or the Zila Parishad, as the case may be, will have to be taken into account. These conflicts are not good especially when the third tier of government is a reality brought by the Constitution of India 10 years ago.
2. Criss-cross allegations against the District Magistrates would harm their position, institutionally, and yet the Court cannot prevent the debate which members of the third tier of government have brought of interference in their functioning by the local bureaucracy.
3. Broadly speaking, the Court is of the view that these conflicts are happening because all the institutions referred to in the amended Constitution (Chapters IX and IXA) brought by 73rd and 74th amendments are not in its place. How the State government arranges this situation to embarrass the Constitution of India the Court would not know. If the Constitution has ordained institutions to work for the third tier of government, then these institutions have got to be in place

and working. They should have been in place when amendments to the Constitution took effect. The High Court owes it to the Constitution of India to ensure that the self governing institutions including those identified in the Chapters aforesaid are in their place and functioning. One does not take time against the Constitution as the State government and its counsel do on instructions. In any other nation where democracy works by the Rule of Law and has matured itself constitutionally identified institutions work. If the institutions mentioned in the Constitution are not permitted to work then the answer would be very clear on what would happen to the government.

4. Thus, no further time of any indulgences to anybody, no matter which authority has prayed it, may be granted. For the almost last two years the State government is availing positioning constitutional institutions. The institutions referred to in Chapters IX and IXA beginning with the District Planning Committee are to be put in its place by tomorrow. Again and again time was granted for this purpose. The Court was indicated that the exercise has been done. Then why the implementation is being evaded. State counsel pray for time till noon tomorrow. That these institutions have been put in its place will be stated on an affidavit by the Chief Secretary.

5. Put up tomorrow at noon.

6. Let a copy of this order be sent to the Governor, Bihar, Chief Minister, Bihar and the Chief Secretary.