

(2004) 07 PAT CK 0042
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 : 05-07-2004

Acts Referred:

Constitution of India, 1950 — Article 243F, 243I, 243L, 243N, 243Y

Citation : (2004) 3 PLJR 631

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

Bench : Division Bench

Advocate : Jitendra Kr. Roy, for the Appellant; S.K. Ghose, S. Alamdar Hussain and Nirmal Kumar Sinha for State and P.N. Narayanan, IAS, The then Secretary, Rural Development and Sudhir Kumar Rakesh, Secretary, Rural Development, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—This matter is about the voids which are at present in the State legislation in not placing the Committee for District Planning (Article 243ZD). That it is not there in accordance with the Constitution of India is not in issue but is accepted.

2. Notice in this case was issued, as a constitutional exercise had to be gone into, to the Governor of Bihar, and the Chief Minister, Bihar. Notice was also issued to the Advocate General on 24 June, 2004.

3. The constitutional amendments came in 1993. The obligation to fall in line with the Constitution should have been done within one year (Article 243N and Article 243F).

4. Avoiding the obligations which have been given in the Constitution for ten years is an insult to the Constitution. Truly, the issue is about hesitation in transferring power to the peoples representatives of the third tier of government. In this regard, the following observations at the Chief Minister's conference on poverty alleviation and Rural Prosperity through Panchyati Raj dated 29 June,

2004 is reproduced:

Our challenge today is to institutionalize this system of local self-government to make India not only the world's largest democracy, but also to make it the world's most representative and participatory democracy. Much remains to be done however, before we can actually claim to have empowered the elected bodies to function as institutions of local self-government. 37th Report of the Parliament's Standing Committee on Urban and Rural Development tabled in the Parliament in December 2002 gives us an indication of the, possibilities that we explore.

5. But, how will Bihar do it? It does not have even the District Planning Committee in its place.

6. Truly, this is a matter for legislation, a nuance of correct politics to be subservient to the Constitution. Bihar has not enacted it, other States have. In the circumstances, if such of those States which have enacted legislation to represent the District Planning Committee, perhaps, they are in a position to object, as if to say funds should not be given directly to the third tier of government. Has Bihar attempted to fall in line by installing the institutions which are mentioned in Chapters "Panchayats" and "Municipalities"? The answer is no.

7. For three long years, this Court has waited. That the institutions referred to in Chapter IX and IXA (Panchayats and Municipalities) respectively, will be installed forthwith, this has not been done. The Court apprehends that the people of Bihar will loose out on a lot of Central Government funding if the Committee which has been invested with the obligation to participate in planning is not structured.

8. Further, the Court is fully conscious of the fact that it is not a "Man for all Seasons" to point absence of or deficiency in the law which should fully take care of grass-root democracy as the Constitution says. The obligation to the Constitution is the duty of the State government concerned. The Court only certifies the situation. But the Court also cannot suffer a situation that for ten years the government of Bihar will not fall in line with the Constitution. This is virtually certifying that the government functions by avoiding the discipline of the Constitution.

9. How will the District Planning Committee be installed? The modalities have not been provided in the enactment when the Constitution says that the State legislature shall enact a law. The law has not been enacted. The only guidance the Court has is the stipulation in the Constitution (Article 243ZD), to the effect, that this Committee must represent the people of the district. If the District has a municipality then the apportionment of the representation from among the elected should be between the rural and the urban population. The representatives of the elected people and amongst them must not be less than 4/5ths.

10. It was encouraging and heartening with two Secretaries present when they requested the Court to spell out an order and in the meantime the legislation will be undertaken as fast as possible and placed before the Cabinet. The suggestion implies that the District Planning Committee may be positioned on the discussion arising out of these proceedings and that when the legislation does come in accordance with the Constitution, it may override this order. The Court feels that this is a graceful solution.

11. The Court can do nothing more but to suggest to the two Secretaries that for constituting the numbers of the people's representatives and co-relating it to the population of a district, they may have recourse to the legislation which has been made by one of the States. This is Maharashtra. This State has an official document, a white paper. Recourse may be had to Chapter 39 entitled "Decentralised Planning in Maharashtra". The subject is District Planning Committee. Paragraph 39.1 and Paragraph 39.2 refer to Maharashtra District Planning Committee (Constitution & Functions), Act 1998. In so far as the numbers out of which 4/5ths will be represented, this is shown in the following manner:

(A) Total Members of Committee & elected Members of Committee

Population

total Members

Out of which 4/5 to be elected.

1. Not more than 20 Lakhs

...30

24

2. More than 20 Lakhs but not more than 30 Lakhs

...40

32

3. More than 30 Lakhs

...50

40

12. The Secretary will be entirely free to take necessary orders from the Cabinet on what should be the total number of members, not less than 4/5ths which may constitute members representing rural and urban Bihar in a particular district. It may be remembered that the expression in the Constitution is not less than 4/5ths. It may be even more than 4/5ths. The suggestion which is there may be adjusted to the conditions in Bihar.

13. Since it is acknowledged that the legislation has yet to be drafted, the Court suggests that since it has to be amongst the elected members, those with the highest number of votes which may have been polled by the elected representatives at all levels of Panchayats and Municipalities may constitute the District Planning Committee in the ratio as indicated in Article 243ZQ. Census figures of 2001 are already available. For example, from the office of the Registrar General of India, the figures available as on 23 October, 2001 and modified on 2nd March, 2002, the first entry at item No. 1 is Paschim Champaran and the last entry as item No. 37 is Jamui. The two entries read thus:

1. Paschim Champaran Urban 10.17% Rural 89.83%

37. Jamui Urban 7.38% Rural 92.62%

14. Now the State government may proceed in making out their representatives as census figure from the Registrar General of India are already available.

15. On whatever may be the legislation which will ultimately be provided, and there should not be any delay on this, whenever it is passed whatever be their content, it is understood that it will override this order.

16. This exercise virtually has come out after a discussion with the Secretaries to the government present. This discussion was extended for many days in the past. Even the Court was embarrassed that for ten long years the institutions which have been mandated by the 73rd and 74th amendments were not put in place.

17. According to the suggestion as are contained in the present order, there should be no delay in structuring the Committee for District Planning. Otherwise, the Court foresees that Bihar may lose a lot of funding from wherever it may have come. Thus, the sooner the Committees for District Planning are installed, the better it will be for the benefit of Bihar. In so far as their functioning is concerned, there will yet be a place for the younger bureaucracy to guide the District Planning Committees to arrive at correct decisions without compromising the provisions of law which govern them. Protecting conforming uses of land will be one such subject on which the bureaucracy will lend its guidance.

18. The other aspect of this matter, the Court feels, is about the other institutions referred to under Panchayats and Municipalities. These are the State Finance Commissions which have been constituted for the very purpose of the third tier of the government. The reference is Article 243I and 243Y. State Counsel has attempted to show that these Finance Commissions are working. What is on record is that it has submitted "no report" in one set of years and in other years it has considered Finance Commission Reports of the Government of India. Why try to show what is not earnest? The Court desires and would like to send out a message that these bodies, the State Finance Commissions (Article 243I, 243Y) should become more proactive. It must also be ensured that the District Planning Committees meet at least once in two months. The Secretaries

present and State counsel, S.C. 6, suggest to submit a report by 13 July, 2004.

19. Put up on 13 July, 2004.