
(1995) 02 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7597 of 1994

Yugal Kishore Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0021

Final Decision : Dismissed

Judgement

Asok Kumar Ganguly, J.—Heard learned counsel for the parties and also perused the affidavits filed by the respondents-parties including the affidavit filed by the intervenors. This matter is being disposed of finally at the admission stage by passing the following order :

2. This writ petition has been filed by one Yugal Kishore Choudhary for the following reliefs :--

"(a) To command the respondents 2 and 3 to forthwith take appropriate steps to convene the meeting of the members of Dalsing-sarai Notified Area Committee which is a mandate under provisions of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the Act for brevity) to be held once in every month, but since 5-8-93 no meeting has been convened resulting in the development works to come to a grinding halt.

(b) To direct the respondent No. 2 to hold an enquiry in regard to unauthorised and illegal cheques (without getting it sanctioned and countersigned) issued under the pen and signature of respondent No. 3 and thereby cancel all the cheques as being issued (after 1-4-91 till date) without any jurisdiction and thereby take appropriate legal action, as prescribed under the law against the latter.

(c) To further direct the respondent No. 3 to strictly adhere to the statutory duty cast upon him under the Act and rules framed thereunder in so far the smooth and effective functioning of the said notified area committee is concerned.

(d) To pass such other order/orders as be deemed legally fit and proper in the facts and circumstances of the case, as stated hereunder."

3. In this writ petition, it has been categorically stated by the petitioner in paragraph 3 that he is one of the members of Dalsingsarai Notified Area Committee. In paragraph 4 of this writ petition it has also been stated that the said committee of which he claims to be a member, has been brought into existence by Notification No. 2195 dated 7-7-1992 issued by the State Government in which 28 persons were there and the writ petitioner was at serial No. 23. Various other factual assertions have also been made in the said writ petition but for the order which I propose to pass in this case, no detailed investigation of the facts of this case is required.

4. This writ petition was filed before this Court on 1-9-1994 and some ex parte interim order was obtained from a Division Bench of this Court on 16-11-1994 on this writ petition where a clear impression which has been given that the petitioner is continuing as a member of Dalsingsarai Notified Area Committee and the same is in existence.

5. Pursuant to notice issued by this Court, the respondent No. 3 entered appearance. It was pointed out in the counter affidavit on his behalf that this writ petition has been filed by suppressing the fact that by a judgment of this Court dated 2nd December, 1993 passed in C.W.J.C. No. 9355 of 1992 filed by one Shreemant Kumar Chaudhary, the notification on the basis of which the writ petitioner is claiming to be the member of the said Notified Area Committee, has been quashed, inter alia, on the ground that out of 26 members of the said Committee, 20 members are disqualified and one member died. The said judgment has also been annexed to the affidavit given by respondent No. 3.

6. It is common ground that the writ petitioner was a party to the said proceeding (C.W.J.C. No. 9355 of 1992) and had notice of the same. It also appears that against the said judgment and order dated 2-12-1993, a proceeding has been initiated before the Supreme Court and the same is now pending.

7. In my view the filing of the present writ petition on 1-9-1994 which was much after 2-12-1993, on suppression of the fact that the notification by which the petitioner claims to be a member of the said Notified Area Committee had been quashed by this Court, is a gross abuse of the process of the Court and it is clear that the petitioner has not come to this Hon"ble Court with clean hands at all. In this connection reference may be made to the decisions of the Hon"ble Supreme Court in the case of Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, . Relevant portions in paragraph I of the said judgment are set out below (at p. 622 of AIR) :-

"In other words, it is clear that on 1-10-1982 the petitioners made a false representation to this Court that they were continuing their studies as Post Graduate students of Medical College, Rohtak on 1-10-1982, and obtained an order of status quo as of that date to be maintained from this Court. But for the

misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the special leave petitions are liable to be dismissed."

Then again at p. 623 (of AIR), the Apex Court observed as follows :--

"Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr. A. K. Kapoor who happens to be a medico-legal consultant practising in Courts) is most reprehensible and deserves to be deprecated."

xxx xxx xxx We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour but direct that the petitioners will pay a sum of Rs. 2,500/- each by way of costs to the respondents. The two S.L.Ps. and C.M.P. are thus dismissed with the aforesaid direction in regard to payment of cost."

8. Similar view is expressed in the another Supreme Court decision in Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, , relevant portions whereof are reproduced below (at p. 1018 of AIR) :--

"Instead of honouring this agreement, the petitioners within a span of 12 days rushed to this Court and obtained ex parte stay order wholly suppressing the fact that the orders impugned in these petitions have already been replaced by the latest order dated January 5, 1981. Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court."

9. This position is well settled from the days of the decision of the King's Bench Division in the King v. General Commissioners for the Purposes of the Income Tax Act for the District of Kensington reported in (1917) 1 KB 486 wherein Lord Viscount Reading C.J., was pleased to observe as follows :--

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

10. Here also the Court feels that it has been deceived on the basis of the misleading averments made in the writ petition and as such follow the aforesaid principles.

11. In that view of the matter, I dismiss this writ petition summarily without going into the merits of the case with costs assessed at Rs. 1,000/- (Rupees one thousand). The said amount must be paid by the petitioner to the funds of the said Notified Area Committee within four weeks from today. This part of the order will be treated as a decree of this Court and will be executed as such if the aforesaid amount is not paid within the period aforesaid. All interim orders, passed earlier, are vacated.