

Shankar Sinha Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-03-1994

Judge : Bisheshwar Prasad Singh and Ram Nandan Prasad, JJ.

Acts : Essential Commodities Act; Code of Criminal Procedure (CrPC) , 1974 - Sections 24, 24(1) to (7), 24(8) and 24(9)

Appeal No. : Civil Writ Jurisdiction Case No. 4829 of 1991

Appellant : Shankar Sinha

Respondent : State of Bihar and ors.

Advocate for Def. : Chandramauli Kumar Prasad, A.A.G. III and Chandrashekhar Prasad Sinha, J.A. to AAG III and Kameshwar Kumar, Adv.

Advocate for Pet/Ap. : Awadhesh Kumar Singh and K.K. Sinha, Adv.

Disposition : Petition dismissed

Prior history : Bisheshwar Prasad Singh and Ram Nandan Prasad, JJ. 1. In this application the petitioner has challenged the appointment of respondent No. 6 as a Special Public Prosecutor to conduct cases under the Essential Commodities Act on behalf of the State in the district of Muzaffarpur. The letter of appointment dated 12-7-1991 has been annexed as Annexure-1. The case of the petitioner is that by Annexure-3 dated 2nd February, 1991, the Under Secretary in the Department of Law reminded the District Ma

Judgement :

Bisheshwar Prasad Singh and Ram Nandan Prasad, JJ.

1. In this application the petitioner has challenged the appointment of respondent No. 6 as a Special Public Prosecutor to conduct cases under the Essential Commodities Act on behalf of the State in the district of Muzaffarpur. The letter of appointment dated 12-7-1991 has been annexed as Annexure-1. The case of the petitioner is that by Annexure-3 dated 2nd February, 1991, the Under Secretary in the Department of Law reminded the District Magistrate that recommendation for appointment of Special Public Prosecutor had not been received. It appears from Annexure-5 dated 23rd March, 1991, that the District and Sessions Judge of Muzaffarpur had recommended three names for appointment as Special Public Prosecutor, which did not include the name of respondent No. 6. However, the District Magistrate had also called for recommendation of the local Bar Association, and by Annexure-6 dated 1st July, 1991, the Secretary of the local Bar Association recommended nine names including the name of respondent No. 6. It is not in dispute that respondent No. 6 has been practising as an Advocate since the year 1967. By the impugned order (Annexure-1) respondent No. 6 has been appointed as Special Public Prosecutor to conduct cases relating to the Essential Commodities Act in the district of Muzaffarpur.

2. It was urged before us that in the matter of appointment of a public Prosecutor the government must consider the recommendation made by the District Magistrate, who, in turn, is obliged to make a recommendation in consultation with the District Magistrate. In the instant case, since the name of respondent No. 6 was not recommended by the District Magistrate in consultation with the District Judge concerned, the appointment is illegal being contrary to the mandate of Section 24 of the Code of Criminal Procedure.

3. Section 24 of the Code of Criminal Procedure deals with appointment of Public Prosecutors and Additional Public Prosecutors at different levels Sub-section

(1) deals with Public Prosecutor or Additional Public Prosecutors who may be appointed for conducting prosecution, appeal etc. before the High Court. The

Central Government or the State Government, as the case may be, is authorised to make appointment after consultation with the High Court. Under sub-section

(2) the Central Government is authorised to appoint one or more public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area. Sub-section

(3) deals with appointment of a Public Prosecutor for the district. Sub-section

(4) lays down the procedure for the appointment of Public Prosecutor or Additional Public Prosecutors for the district. It provides that the District Magistrate shall in consultation with the Sessions Judge prepare a panel of names of persons who are, in his opinion, fit to be appointed as such. Sub-section 5 prohibits the State Government from appointing any person as public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4). Sub-section

(7) provides that a public Prosecutor or an Additional Public Prosecutor appointed under Sub-sections (1), (2),

(3) and

(6) of Section 24, should have at least seven years of practice as an Advocate. We shall deal with Sub-section

(8) later, but from the provisions of Sub-sections

(1) to

(7) of Section 24, it is quite apparent that the Public Prosecutor or Additional Public Prosecutors appointed to conduct cases in the High Court are to be appointed in consultation with the High Court. So far as Public Prosecutor or Additional Public Prosecutors for the district are concerned, they are to be appointed on the basis of recommendation made by the District Magistrate in consultation with the Sessions Judge, and in view of Sub-section

(5) no person can be appointed as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4). Obviously, Sub-section

(5) has to be read in the light of Sub-sections

(3) and

(4) of Section 24, and the prohibition contained in Sub-section

(5) will not apply to appointments made under Sub-section

(1) or Sub-section (2), because there is no requirement under those Sub-sections of recommendation by the District Magistrate.

4. Sub-section (8) of Section 24, provides that the Central Government or the State Government may appoint for the purposes of any case or class of cases, a person who has been in practice as advocate for not less than ten years as a Special Public Prosecutor. There is nothing in Sub-section (8) or Sub-section (9) of Section 24, which imposes any prohibition, as is contained in Sub-section (5) of Section 24. Obviously, therefore, in the case of appointment of Special Public Prosecutor for the purpose of any case or class of cases, the Central Government or the State Government has been left with the discretion to appoint any person as Special Public Prosecutor, who is otherwise qualified to be appointed as a Special Public Prosecutor. The qualification laid down in Sub-section (8) is that he must be a person who has been in practice as an advocate for not less than ten years. It will be noticed that in the case of Public Prosecutor or Additional Public Prosecutors of the district the qualification prescribed is that he should have practiced as an advocate for not less than seven years.

5. On a proper analysis of Section 24, we are left with no doubt that in the case of appointment of a Public Prosecutor or Additional Public Prosecutors to conduct cases in the High Court, the appointment has to be made in consultation with the High Court. In the case of appointment of Public Prosecutor or Additional Public Prosecutors for the district, the appointment has to be made on the basis of recommendation of the District Magistrate, who must make his recommendation in

consultation with the Sessions Judge. In the case of Special Public Prosecutor appointed for the purpose of any case or class of cases no consultation with any authority is required and the Central Government or the State Government is fully empowered to appoint anyone with the requisite qualification, as a Special Public Prosecutor. Since respondent No. 6 has the requisite qualification, his appointment cannot be challenged.

6. It was then submitted before us that the order (Annexure-1) is tainted with mala fide. The submission proceeds on the sole basis that the Under Secretary in the Department of Law, who has signed the letter of appointment on behalf of the State, happens to be the brother-in-law of respondent No. 6. The mere fact that he happens to be the brother-in-law of respondent No. 6 is of no consequence, as we can take judicial notice that in the matter of appointment of Special Public Prosecutors the Under Secretary in the Department of Law has hardly any role to play. He is a mere officer of the Government who issues communication on behalf of the State.

7. We, therefore, find no merit in this application, and the same is, accordingly, dismissed.