

Rakesh Kumar and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-08-2004

Judge : S.K. Katriar, J.

Acts : Motor Vehicles Act; Bihar Excise Act; Registration Act; Bihar Land Ceiling Act - Sections 45B; Bihar Pension Rules; [Constitution of India](#)

Appeal No. : CWJC No. 13843 of 2003

Appellant : Rakesh Kumar and ors.

Respondent : State of Bihar and ors.

Judgement :

S.K. Katriar, J.

1. Mr. Sanjay Singh, learned Standing Counsel No. IX is present along with the Chief Secretary, Government of Bihar, Secretary, Department of Revenue and Land Reforms, Government of Bihar Patna, the District Magistrate, Chapra (Saran), D.D.C. Purnia on behalf of District Magistrate, Purnia, Additional District Magistrate, Kishanganj, on behalf of District Magistrate, Kishanganj, Block Development Officer-cum-Circle Officer, Kishanganj and Circle Officer, Marhowrah, Saran.

2. A large number of writ petitions have been coming up before this Court wherein the basic issues are common. In fact, a large number of such writ petitions are today listed before me along with the present writ petition. In view of the general nature of such issues affecting administration of justice in this state in general and this Court in particular, I am dealing with those issues collectively in one of them. My observations hereinbelow are based on the cases that have been placed before me for adjudication from time to time.

3. There are a large number of enactments in this State which confer quasi-judicial powers on different functionaries of the State for effective disposal of the lis thereunder. Most of such legislations relate to land laws which are administered by the Department of Revenue and Land Reforms, apart from some other legislations like Motor Vehicles Act, Bihar Excise Act, Registration Act etc. Failure and/or disinclination on the part of the various functionaries vested with such quasi-judicial powers to hold their Courts punctually and diligently are giving rise to a large number of most unwanted writ petitions in this Court. In fact, the situation is so alarming that most of them do not hold Courts for months together. A large number of writ petitions are being filed in this Court for a direction to one or the other quasi-judicial authority to dispose of the main matter pending before him within a fixed period. Recently I dealt with a writ petition seeking a direction to the Anchal Adhikari to submit his report to the Collector called for by the latter where the main matter is pending. Few writ petitions are also filed for-a direction to the authorities to issue certified copies of the orders. I have discussed facets of some of these problems in my earlier orders which are indicated hereinbelow by way of illustration :

(i) Order dated 17.9.2001, passed in CWJC No. 11462 of 2001 Gyananand Choudhary v. The State of Bihar and Ors.;

(ii) Order dated 21.3.2002, passed in CWJC No. 2603 of 2002 Kundan Kumar Singh v. State of Bihar and Ors.;

4. The Minister for the Department of Revenue and Land Reforms, Government of Bihar, is the prescribed authority under Section 45-B of the Bihar Land Ceiling Act. It appears to me in view of the prayers made in a large number of cases coming

up before this Court that the present incumbent in the office (the prescribed authority) is not discharging his duty under Section 45-B of the said Act in the appropriate manner giving rise to most unwanted writ petitions in this Court of the nature stated in the paragraph above. He does not seem to hold his Court, and if he does, it only results in adjournment of cases. The Chief Secretary submits that he has taken note of the situation and states that he shall place an appropriate note before the Minister for proper and effective discharge of the duties under the said provision of law. The prescribed authority should keep in mind the scope and ambit of Section 45-B of the Act which I had the occasion to deal with in my judgment dated 2.9.2003 in CWJC No. 2983 of 2003 *Sunil Kumar alias Sunil Kumar Singh v. The State of Bihar*, since reported in 2003 (4) Patna Law Journal Reports 719.

5. Another important aspect of the matter obstructing the administration of justice is the repeated and persistent failure on the part of Government functionaries to file or, if filed, inadequate and unsatisfactory, counter affidavits. This Court is giving particular emphasis to the cases under the Land Ceiling Acts which are being taken up on out-of-turn basis so that the provisions thereunder are implemented effectively. It is the unhappy experience of this Court that the counter-affidavits of the respondent authorities in writ petitions in general are delayed resulting in repeated adjournments.

5.1. Another important aspect of the matter is the extremely incomplete counter affidavits on the part of the respondent authorities and their irresponsible approach of confronting this Court with their conclusions. Law is well settled that in the event of challenge to the validity of an executive action in Court, it is the duty of the respondent authorities to place all relevant materials and documents for its perusal to enable it to come to its own conclusions rather than confronting it with their bare conclusions alone. In such a situation, the Government functionaries illegally and purposely try to arrogate to themselves the authority to judge the validity of their own action. If that were permitted, the power of judicial review conferred on this Court under the [Constitution of India](#) shall be set at naught.

6. Another major problem with the counter affidavits filed by the State Government and its functionaries is the unreliable, irresponsible, and false statements made by them where every statement has to be closely scrutinised, as closely as that of an ordinary, rabid litigant. The judgment dated 22.3.2004 of this Court passed in CWJC No. 7638 of 2001 Sri Krishna Singh v. The State of Bihar 2004 (3) PLJR 75, and dated 8.9.2004 in MJC No. 621 of 2001 Dr. Smt. Ritambhari Devi v. The State of Bihar are illustrative of this kind of a situation.

7. A large number of writ petitions are also coming up because of the mala fide approach on the part of the functionaries of the State Government who by their unscrupulous approach, acting with mala fide and ulterior motives, harass the citizen no end and burden this Court with most unwanted litigations. This Court observed as follows in the aforesaid judgment in Sri Krishna Singh v. The State of Bihar. Respondent No. 2 (P.N. Narayanan, the departmental Secretary) has purposely misquoted and misinterpreted in the impugned order, the relief prayed for in the previous writ petition which does not in the least indicate that the petitioner had confined his relief to the four divisions.... I have not the slightest manner of doubt that respondent No. 2 has acted in a mala fide manner and has tried to over-reach this Court. He should not have attempted to sit in judgment over the orders of this Court. This has harassed the petitioner no end and has burdened this Court with a most unwanted litigation, He should act in a more responsible manner in discharge of his official duties. Is he under the impression that it is only the Court which has to deliver justice to the citizen, and it is no part of the duty of the State Government and its functionaries to act in consonance with justice, fair-play, and good conscience This Court records its strong feeling of displeasure as to the mala fide manner in which respondent No. 2 has acted in this matter.... It is tantamount to purposely offending anybody and then expressing regret to be pardoned and is once again a mala fide attempt on the part of respondent No. 2 to deflect the course of justice. The question could have really arisen had there been any doubt or difficulty about the orders passed by this Court, I have not the slightest manner of doubt that the two orders of this Court lead to one and only one conclusion stated hereinabove. The problem has arisen because of the mala fide approach on the part of respondent No. 2 ex facie acting with ulterior motives.... The respondent authorities should be ashamed of their

conduct....

(Emphasis added)

8. The order dated 8.9.2004 of this Court in MJC No. 621 of 2001 Dr. Smt. Ritambhari Devi v. The State of Bihar and Ors. is also illustrative of the wilful and deliberate approach of the authorities of the State Government whereby the Finance Commissioner and the Secretary and Commissioner (Primary and Adult Education) have not found four years adequate to implement the orders of this Court with regard to payment of post-retirement benefits to the petitioner who incidentally is a widow. Affidavits after affidavits have been filed by them making statements that are ex facie contrary to the records to deprive the petitioner of her dues and burdening this Court with unwanted matters. Why should this Court's intervention be needed for so routine a matter as payment of post-retirement benefits which are not paid in spite of orders of this Court spread over four years on the basis with repeated statements of incorrect facts by the said two functionaries. This habit of trying to mislead the Court and making false statements in their affidavits, in discharge of their official duties particularly at the senior level, who do it with interpidity, is an alarming phenomenon in this State.

9. A large number of writ petitions arising out of land acquisition proceedings are coming up before this Court with relentless regularity where, in most of the cases, the poor farmer has been deprived of possession of his land which was his source of livelihood and land acquisition proceedings have not commenced for periods ranging between ten to thirty years, let alone the question of payment of compensation. The petitioner of CWJC No. 8604 of 2001 is a widow, the possession of whose land was taken over by the State Government in February 1976, when her husband was alive, and payment of compensation started trickling in after the orders of the this Court are being passed since the writ petition was filed. It is still pending and final payment is yet to be made.

9.1 The State Government is in the habit of filing frivolous First Appeals in this Court arising out of land acquisition cases where, in many cases, valuation of appeals range from Rs. 500/- to a few thousand rupees.

10. Another aspect of the matter which needs close attention of the State Government are the matters relating to post-retirement benefits. I had the occasion to deal with this matter on various occasions and I have noted that nearly 95 per cent of such cases in this Court are essentially administrative in nature, nay clerical, where the State Government admits the dues, this Court orders the State Government and the departmental heads in a routine and mechanical manner to issue sanction orders within a fixed period. In five per cent of the cases or so, the State Government has a defence where action is sought to be taken under the Bihar Pension Rules, disciplinary action is pending against the employee, or some allegedly inadmissible money benefit was paid to the employee while in employment and is sought to be recovered. Nearly 95 per cent of such writ petitions are entirely on account of the inaction and mala fide approach on the part of the respondent authorities. In spite of repeated assurances and the undertakings of the State Government represented by the Chief Secretary, the situation has not improved. The following has been the pendency of the writ petitions for payment of post-retirement benefits, and two Benches of this Court are engaged in dealing with them :

As on 31.01.2002 -2694

As on 29.01.2003 -3274

As on 04.09.2004 -2644

11. This is not the end of the matter. After orders are passed on the writ petitions directing payment of post-retirement benefits, the employees and in some cases the widows, have to file contempt applications in this Court on account of non-implementation of the orders of this Court which have to be kept pending for effective implementation of the orders of this Court. Will any body in Government realise that only senior citizens and widows are before this Court in such matters. The aforesaid MJC No. 621 of 2001 is clearly illustrative of the situation. Matters have come up before this Court where the original petitioner, a retired employee, had to be substituted by his widow. In a few case before me, even the substituted widow died followed by substitution of the children. The following has been the pendency of contempt applications in this Court :

(i) As on 31.01.2002 -5315

(ii) As on 29.01.2003 -5803

(iii) As on 04.09.2004 -3598

The aforesaid contempt applications include matters other than post-retirement benefits also. The figures speaks for themselves.

12. In order to curb the situation, this Court had called upon the then Chief Secretary to answer the aforesaid questions and submit his affidavit. He filed affidavit on 31.01.2002 giving undertaking to this Court on behalf of the State Government that effective steps would be taken to curb the situation. He along with the successor Chief Secretary, the Finance Commissioner, and other departmental heads were directed to be present again on 29.1.2003 to explain the position and the steps taken to carry out the undertaking to this Court. On 29.01.2003, the then Chief Secretary and other functionaries submitted another undertaking to this Court that effective steps shall be taken to ameliorate the situation. It is manifest from the aforesaid facts and figures that the situation has not improved.

13. The permanent part of the administration comprises of functionaries, particularly the leading ones, are drawn from the Indian Administrative Service. They are recruited from All India Service and are heads of departments and, therefore, the greatest responsibility of running the departments is on them. There is great expectation from the steel frame which has been given a parade of place in the [Constitution of India](#), and it should function with vigour and dedication, the administration should not deteriorate otherwise we may reach a stage in the governance of this State where shame would be ashamed, and the God Almighty would Himself be required to descend for its redemption. Great responsibility rests on the members of the Indian Administrative Service who head the departments. I hope, the following view of cynics like T.N. Sesan, a former member of the I.A.S., who also served this Country as Chief Election Commissioner, in his book entitled 'A Heart Full of Burden', is not true :.what is the Indian Administrative Service, except saying : I am Sorry. I am saying in public that the Civil Service in India has

got reduced to the condition of polished call girls....

14. I am reminded of the two-fold conclusions of a research work in law that on account of the inaction, inefficiency, ulterior motives and the like, all of which can compendiously be covered in one legal expression 'mala fide', Government, Governmental agencies, and its instrumentalities, and their functionaries, are passing on their own decision-making to Courts. The second conclusion is that they are parties to more than seventy per cent of the litigations in this country. This was followed by another research work which concludes that the existing litigations in this country, without any addition thereto, will take more than a century to be cleared up. In the State of Bihar, the State Government and its functionaries are passing on their administrative matters to this Court. A brief summary has been given hereinabove with respect to pendency of such matters. Under the [Constitution of India](#), the duty cast upon this Court is to adjudicate disputes between man and man, man and the State, and between State and State. In a large number of matters coming up before this Court, there is no dispute at all between the parties. Can this Court take this load. The State Government and the authorities do not function and their routine administrative matters are passed on to this Court as a result of which this Court is not able to dispose of the contested matters.

15. The Chief Secretary today promises to this Court that he shall take remedial measures to ameliorate the situation. As prayed for by him, put up on 14.10.2004 at the top of the list on which date he shall be personally present with his affidavit(s) along with the Finance Commissioner, the Revenue and Land Reforms Commissioner, and the Director of Land Acquisition. Appearance of the Collectors are dispensed with.

16. Let a copy of this order be handed over to Mr. Sanjay Singh, learned Standing Counsel No. IX and Mr. V.K. Bhagat, learned Standing Counsel (Ceiling).