

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 516 OF 2013
(Arising out of SLP (C) No. 22617 of 2008)

State of Bihar & Anr.

.... Appellant (s)

Versus

Sunny Prakash & Ors.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the judgment and order dated 07.08.2008 passed by the High Court of Judicature at Patna in CWJC No. 10870 of 2008 whereby the Division Bench of the High Court in a Public Interest Litigation (PIL) issued *mandamus* directing the Chief Secretary, Government of Bihar, Patna to ensure that the commitment given by the State Government to the Bihar State University and College Employees Federation (in short “the Federation”) is

honoured and implemented within one month from the date of the judgment.

3) Brief facts:

(a) The Government of Bihar, Education Department, vide G.O. dated 25.02.1987, declared the non-teaching staff of Universities and Constituent Colleges equivalent to the Government staff.

(b) On 16.07.2003, an Agreement/Compromise was arrived at between the Federation and the State Government, regarding parity between the employees of the Constituent Colleges of the University and the State Government. On 21.07.2003, the State Government sent the said Agreement to the Vice Chancellors of all the Universities of the State of Bihar for necessary action.

(c) In 2005, because of the non-implementation of the Agreement arrived at, there was a strike by the Federation in the State of Bihar. Following the strike of the Federation, on 24.08.2005, an understanding was arrived at between the Federation and the Government of Bihar and the strike was recalled later.

(d) Since the Agreement was not implemented, on 01.07.2007, the Federation again went on strike which led to complete disruption of educational activities in the Colleges and the Universities of Bihar. On 17.07.2007, a meeting was held between the representatives of the Federation and the Government of Bihar and an Agreement/Understanding was again arrived at on 18.07.2007 for consideration of their demands. Pursuant to the same, on 19.07.2007, a letter was issued by the Government for implementation of the Agreement and the strike was recalled.

(e) In July, 2008, again, on account of non-implementation of the Agreement/Understanding, the Federation was again constrained to go on strike. Due to indefinite strike of teaching and non-teaching staff of the Universities, on 14.07.2008, a letter was written by Sunny Prakash (Respondent No. 1 herein), student of Daroga Prasad Roy Degree College, addressed to the Chief Justice of the High Court requesting to end the strike, which was treated as a Public Interest Litigation (PIL). On 28.07.2008, an

intervention application was filed by the Federation (R-5) in the PIL before the High Court.

(f) After hearing the parties, the Division Bench of the High Court, vide order dated 07.08.2008, *inter alia*, directed the Chief Secretary, Government of Bihar to ensure that the commitment given by the State Government to the Federation which have been reduced to writing on 18.07.2007, is honoured and implemented within one month. The High Court also directed the Federation to withdraw the strike immediately.

(g) On 22.08.2008, an application was filed by the Government of Bihar for modification of the impugned order, which was also dismissed by the High Court.

(h) Aggrieved by the order dated 07.08.2008 passed by the High Court, the State of Bihar preferred the above appeal by way of special leave petition before this Court.

4) Heard Mr. Rakesh Dwivedi, learned senior counsel for the appellants, Mr. K.K. Venugopal, learned senior counsel for respondent Nos. 4 and 5, Mr. Manu Shanker Mishra,

learned counsel for respondent Nos. 2 and 3 and Mr. Ashok Mathur for respondent No.1.

Discussion:

5) The only grievance of the State is that the Agreement dated 18.07.2007 relied on by the High Court for issuance of impugned direction was not in accordance with the Rules of Executive Business, State of Bihar which are statutory rules framed under Article 166 (3) of the Constitution of India. On the other hand, it is the stand of the Federation that the Agreement executed on 18.07.2007 was a valid one and pursuant to the same, the State Government itself issued directions to the authorities concerned for its implementation.

6) In order to understand the rival claim, it is useful to refer copy of the proceedings of the understanding held on 17.07.2007 which reads as under:-

“Proceeding of discussion on 17.7.07 with respect to implementation of proceeding regarding agreement between the Bihar State University and College Employees federation on 24.8.05 and withdrawal of strike.

Present :-

1. Hon'ble Prof. Arun Kumar, Chairman, Bihar Legislative Council.

2. Hon'ble Sri Vrishan Patel, Minister, Human Resource Department.
3. Hon'ble Vasudev Singh, M.L.C.
4. Hon'ble Kedar Pandey, M.L.C.
5. Hon'ble Mahachandra Prasad Singh, M.L.C.
6. Hon'ble Dilip Kumar Choudhary, M.L.C.
7. Hon'ble Ram Kishore Singh, M.L.C.
8. Hon'ble Srimati Usha Sahni, M.L.C.
9. Principal Secretary, Human Resource Development Department
10. Commissioner, Finance Department
11. Addl. Commissioner, Human Resource Development Department
12. Addl. Commissioner, Finance Department
13. Sri Rajendra Mishra, Patron, Mahasangh (Association)
14. Sri Bimal Prasad Singh, President, Mahasangh
15. Sri Ganga Prasad Jha
16. Sri Ramshankar Mehta, Joint Secretary, Mahasangh
17. Sri Dhanajay Prasad Singh, Vice President, Mahasangh
18. Sri Premchand, Joint Secretary, Mahasangh
19. Sri Rohit Kumar, Treasurer, Mahasangh,
20. Sri. M.P. Jaiswal, Executive Member

Regarding the matter of strike by the non-teaching staffs of the university and colleges of the State, the representatives of the Federation met with the Hon'ble Chairman of Bihar Legislative Council in his office on their demands and the following points were considered for issuance of government order and it was decided that the strike will be called off by the Federation: -

1. 50% Dearness Allowance may be merged with Basic Pay.
2. Medical Allowance may be increased from Rs. 50/- (Fifty) to Rs. 100/- (Hundred).
3. Facility of ACP may be given to the employees.
4. Head Assistant and Accountant of the colleges may be designated as Section Officer at the departmental level.

5. Pay scale of Rs. 5500-9000 may be granted to the Assistants of colleges and university.

6. Assistant Librarian and PTI who are possessing qualification fixed by UGC, may be granted UGC pay scale.

7. Library Assistant, Sorter, Routine Clerk, Correspondence clerk may be granted a pay scale of Rs. 4000-6000 at Departmental level.

8. Facilities of accumulation of 240 days Earned Leave and encashment may be granted to the employees at par with the employees of state government which will be admissible similarly to the class III and class IV grade employees.

9. Ward servant may be designated as Hostel servant.

10. Anomalies regarding the pay scale of University Engineer, Assistant Engineer and Junior Engineer and Electrician may be removed.

11. Store Keeper may be treated as an Assistant and pay scale may be given accordingly.

The following points were considered with respect to the period of strike: -

1. No coercive and punishable proceeding will be initiated against any employee for the reason of strike.

2. For strike period, due and admissible earned leave may be sanctioned.

3. Even after above action, if the days of absence remains, the absence that may be sanctioned against earned leave to be earned in future.

4. If earned leave to be earned in future is not sufficient for period of absence the extra-ordinary leave may be sanctioned for remaining period.

After consideration on the above mentioned demands regarding the period of strike were accepted by the

Government to be acted upon within one and a half month as per rules.

Sd/- (Ganga Pd. Jha) 18.07.2007 General Secretary	Sd/- (Dr.Vimal Pd. Sinha) 18.07.2007 Chairman	Sd/- (Sanjeev Kr. Sinha) 18.07.2007 Addl.Commissioner cum- HRD
Secretary, Patna"		

7) The above details show that apart from the Chairman, Bihar Legislative Council, Minister concerned, viz., Human Resource Department (HRD) as well as Principal Secretary, HRD and Commissioner, Finance Department as well as various other higher level officers of the State Government participated, deliberated and ultimately accepted the demands of the Federation. It is also to be noted that at the end of the discussion and after recording of the terms and conditions, General Secretary of the Federation, Chairman and Addl. Commissioner-cum-Secretary, HRD, Patna signed the same on the very next day i.e., 18.07.2007. In such circumstances, it cannot be contended that decision was not taken by or on behalf of the Government.

8) In addition to the same, Mr. Venugopal, learned senior counsel for the contesting respondents has also brought to the notice of this Court the letter dated 21.07.2003

addressed to the Vice Chancellors of all the Universities of the State of Bihar which reads as under:-

"Letter No.2/D01-04/2003 H.E.
Govt. of Bihar
Higher Education Department

From:
Sh. Aditya Narayan Singh
Deputy Secretary to the Govt.

To:
The Vice Chancellors
All the Universities of the
State of Bihar

Patna, dated: 21st July, 2003

Sub: The Proceedings of the agreement dated 16.07.2003
between Bihar State Universities and Colleges Staff
Federation and Govt. of Bihar

Sir,

Copy of the proceedings of the agreement dated 16.07.2003 between Bihar State Universities and Colleges Staff Federation and State Govt. is being sent having annexed for necessary action.

Faithfully

Sd/-
21.07.2003

Aditya Narayan Singh
Deputy Secretary to the

Govt.
Rajendra/19.07.2003
Memorandum No.2/D01-04/2003

Dated 21.07.2003"

9) In addition to the same, it is also brought to our notice that even after the discussion on 17.07.2007, on 19.07.2007

itself, Human Resources Development Department of the Government of Bihar sent another communication to the Registrars of all the Universities of the State to implement the decision arrived in the negotiation held on 17.07.2007. The said letter reads as under:-

"Letter No.2/D 1-04/2003-1107
Government of Bihar
Human Resources Development Department

From:
Gopal Ji
Deputy Director,
Human Resources Development Department

Patna, Dated 19.07.2007

To
The Registrar
All the Universities of the State
Bihar

Subject: For the implementation of the agreement reached with the Bihar State University and College Employees Federation on 24.08.2005 and the proceedings of the negotiation held on 17.07.2007 for recalling the strike.

Sir,

As directed for the implementation of the agreement reached with the Bihar State University and College Employees Federation on 24.08.2005 and a copy of the proceedings of the negotiation held on 17.07.2007 for recalling the strike are being sent for information and necessary action.

Yours faithfully,
Sd/-
(Gopal Ji)
Deputy Director (Higher Education)"

In order to appreciate the stand of both sides, it is useful to refer the earliest decision of the Government of Bihar, Education Department dated 25.02.1987 informing the General Secretary of the Federation, that facilities which have been provided for Government staff shall also be sanctioned to the non-teaching staff of the Universities and subordinate affiliated colleges. The said communication reads as under:-

"No. 123/C
Govt. of Bihar
Education Department

From:
Sh. Bhaskar Banerjee
Secretary to the Govt.
Education Department,
Bihar

To:
General Secretary
Bihar State Universities
and Colleges Non-teaching
Staff Federation,
Patna

Dated: 25th February, 1987

Sir,

This is to inform as per direction that the compromise which has taken place by the Govt. with Govt. staff in regard to the recent strike and the facilities which have been provided, the same shall also be sanctioned to the non-teaching staff of universities and subordinate

affiliated colleges. The Govt. has already taken the decision to declare the same as equivalent to Govt. staff.

The copy of this letter is being sent to the Vice Chancellors of all Universities for kind information and necessary action.

Yours faithfully,

Sd/-

Bhaskar Banerjee

25.02.1987

Secretary to the Govt.,

Education Department

Bihar, Patna”

10) Mr. Rakesh Dwivedi, learned senior counsel for the State contended that in the absence of any decision by the Cabinet in terms of the Rules of Executive Business, any other agreement or decision is not binding on them. However, in the light of the various directions of the very same Government, particularly, by the HRD/Education Department, requesting all the Vice Chancellors and Registrars of all the Universities to implement "Government's" decision, the said contention is liable to be rejected.

11) In support of his claim, Mr. Dwivedi, learned senior counsel for the State relied on a decision of this Court in ***Haridwar Singh vs. Bagun Sumbrui and Others***, (1973)

3 SCC 889 wherein while relying on Rule 10 of the Rules of Executive Business and finding that as per Rule 10 (2), prior consultation with the Finance Department is required for a proposal and Cabinet alone would be competent to take a decision, this Court allowed the appeal and set aside the contrary direction issued by the High Court. According to us, the above decision is not applicable to the case on hand since we have already noted that the Commissioner, Finance Department as well as various other higher level officers of the State Government participated in the discussion. Further, in the said decision, when the Finance Department was consulted, the Department did not agree for the said proposal whereas this was not the situation in the case on hand.

12) The next decision relied on by learned senior counsel for the State is ***Punit Rai vs. Dinesh Chaudhary***, (2003) 8 SCC 204. He pressed into service the following observations made by this Court:

“42. The said circular letter has not been issued by the State in exercise of its power under Article 162 of the Constitution of India. It is not stated therein that the decision has been taken by the Cabinet or any authority

authorized in this behalf in terms of Article 166(3) of the Constitution of India. It is trite that a circular letter being an administrative instruction is not a law within the meaning of Article 13 of the Constitution of India. (See *Dwarka Nath Tewari v. State of Bihar*, AIR 1959 SC 249.)

First of all, the said decision relates to a question, namely, whether the respondent therein belonged to Scheduled Caste community or not? On going through the same, we are of the view that the same is not applicable to the case on hand.

13) Finally, learned senior counsel for the State relied on a decision of this Court reported in ***State of U.P. vs. Neeraj Awasthi and Others***, (2006) 1 SCC 667. This case relates to the jurisdiction of the High Court to issue a direction for framing a scheme for regularization of the employees of the U.P. Agricultural Produce Market Board. Learned senior counsel relied on the statement made in para 41 which reads thus:-

“41. Such a decision on the part of the State Government must be taken in terms of the constitutional scheme i.e. upon compliance with the requirement of Article 162 read with Article 166 of the Constitution. In the instant case, the directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive

Business of the State framed under Article 166 of the Constitution.”

This decision makes it clear that a decision of the State Government must be in compliance with the requirement of Article 162 read with Article 166 of the Constitution and a direction issued by an officer of the State without following such procedure is not binding on the Government. We are in respectful agreement with the same.

14) In the case on hand, we have already extracted the commitment made by the State Government as early as in 1987, subsequent demands made by the Federation on various occasions and the final decision by the Minister concerned, various officers including HRD and Finance Departments, representatives of the Federation and all other persons connected with the issue in question. Added to it, directions were also issued to the Vice Chancellors and Registrars of all the Universities for implementing the said "Government's" decision. In such circumstances, as observed earlier, it cannot be open to the State to contend that it is not a Government's decision in terms of Article 162 read with Article 166 of the Constitution.

15) Mr. Venugopal, learned senior counsel for the contesting respondents heavily relied on the principles laid down in ***State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others***, (2005) 9 SCC 129. The said decision also arose from a dispute concerning the absorption of about 4000 employees working in teaching and non-teaching posts in 40 colleges affiliated to various Universities which were taken over as Constituent Colleges in accordance with the provisions of the Bihar State Universities Act, 1976. It was contended on behalf of the State of Bihar that power to sanction additional posts and appointments against the same in the affiliated colleges is within the exclusive jurisdiction and power of the State under Section 35 of the Act. It was also contended that certain decisions of the Government that were taken after the change of elected Government had no prior approval of the Council of Ministers. The decision by the Cabinet, approval by the Chief Minister on behalf of the Cabinet is *sine qua non* for treating any resolution as a valid decision of the Government. It was also stated that in the absence of

Cabinet approval, the order dated 01.02.1988 which was issued by the Deputy Secretary to the Government of Bihar has no legal efficacy. It was further argued by the State that any valid order of the Government has to be formally expressed in the name of the Governor in accordance with Article 166 of the Constitution. In para 64, this Court has held thus:

64. So far as the order dated 18-12-1989 is concerned, the State being the author of that decision, merely because it is formally not expressed in the name of the Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to *resile* or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government. If at all the two decisions contained in the orders dated 1-2-1988 and 18-12-1989 were not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 1-2-1988 and 18-12-1989, it is not open to the State of Bihar and State of Jharkhand (which has been created after reorganisation of the State of Bihar) to contend that those decisions do not bind them.

From the above conclusion, it is clear that merely because of change of elected Government and the decision of the previous government not expressed in the name of Governor in terms of Article 166 of the Constitution, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them.

16) It is also useful to refer a Constitution Bench decision of this Court in ***R. Chitralkha and Anr. vs. State of Mysore and Others***, AIR 1964 SC 1823. In order to understand the principles laid down by the Constitution Bench, it is useful to quote paras 4 and 5 which read thus:

“(4). The next contention advanced is that Annexure IV was invalid as it did not conform to the requirements of Art. [166](#) of the Constitution. As the argument turns upon the form of the said annexure it will be convenient to read the material part thereof.

"Sir,

Sub : Award of marks for the "interview" of the candidates seeking admission to Engineering Colleges and Technical Institutions.

With reference to your letter No. AAS.4.ADW/63/2491, dated the 25th June, 1963, on the subject mentioned above, I am directed to state that Government have decided that 25 per cent of the maximum marks.....

Yours faithfully,

Sd/- S. NARASAPPA,

Under Secretary to Government, Education Department."

Ex facie this letter shows that it was a communication of the order issued by the Government under the signature of the Under Secretary to the Government, Education Department. Under Art. [166](#) of the Constitution all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be

authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor.

If the conditions laid down in this Article are complied with, the order cannot be called in question on the ground that it is not an order made by the Governor. It is contended that as the order in question was not issued in the name of the Governor the order was void and no interviews could be held pursuant to that order. The law on the subject is well-settled. In *Dattatreya Moreshwar Pangarkar v. The State of Bombay 1952* SCR 612 at p.625: (AIR 1952 SC 181 at pp. 185-186). Das J., as he then was, observed :

"Strict compliance with the requirements of article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself..... Article [166](#) directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under section 11(1)."

The same view was reiterated by this Court in *The State of Bombay v. Purshottam Jog Naik, 1952* SCR 674: (AIR 1952 SC 317), where it was pointed out that though the order in question then was defective in form it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by this Court in subsequent decisions : see *Ghaio Mall and Sons v. The State of Delhi ((1959) S.C.R. 1424)*, and it is, therefore, settled law that provisions of Art. [166](#) of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. The judgment of this Court in *Bachhittar Singh v. The State of Punjab ((1962) Supp. 3*

S.C.R. 713) does not help the appellants, for in that case the order signed by the Revenue Minister was not communicated to the party and, therefore, it was held that there was no effective order.

(5) In the light of the aforesaid decisions, let us look at the facts of this case. Though Annexure IV does not conform to the provisions of Art. 166 of the Constitution, it ex facie says that an order to the effect mentioned therein was issued by the Government and it is not denied that it was communicated to the selection committee. In neither of the affidavits filed by the appellants there was any specific averment that no such order was issued by the Government. In the counter-affidavit filed by B. R. Varma, Deputy Secretary to the Government of Mysore, Education Department, there is a clear averment that the Government gave the direction contained in Annexure IV and a similar letter was issued to the selection committee for admissions to Medical Colleges and this averment was not denied by the appellants by filing any affidavit. In the circumstances when there are no allegation at all in the affidavit that the order was not made by the Government, we have no reason to reject the averment made by the Deputy Secretary to the Government that the order was issued by the Government. There are no merits in this contention."

From this decision, it is clear that the provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government. In the case on hand, we have already demonstrated various communications issued by the Government for implementation of the earlier decision. In such circumstance,

we have no reason to reject those communications sent by the higher level officers of the State Government.

17) Inasmuch as all the persons who were competent to represent were the parties to the said Agreement referred to above and after making such commitment by the State Government, as rightly observed by the High Court, we are also of the view that the same has to be honored without any exception. By the impugned order, the High Court has not only directed the State Government to implement the commitment given by it having been reduced into writing on 18.07.2007, honoured by the State Government itself in subsequent letters/correspondences but also directed the Federation to call off the strike immediately in the interest of the student community. We also make it clear that though the High Court termed the impugned order as interim in nature, considering the fact that the writ petition came to be filed by a student in the interest of the student community by writing a letter which was treated as a PIL, no further order need be passed in the said writ petition, namely, CWJC

No. 10870 of 2008 pending on the file of the High Court at Patna and it stands closed.

18) In view of our conclusion, we direct the State of Bihar to implement the impugned order of the High Court dated 07.08.2008 within a period of three months from the date of receipt of copy of this judgment. The appeal filed by the State of Bihar is dismissed with the above direction. There will be no order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(JAGDISH SINGH KHEHAR)

NEW DELHI;
JANUARY 18, 2013.

JUDGMENT