
10. न्यायालयों के आदेशों पर कार्रवाई

पत्र संख्या-3/सी3-3034/98 का० - 4253

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग

प्रेषक,

श्री नवीन कुमार, सरकार के सचिव ।

सेवा में,

सरकार के सभी सचिव / सभी विभागाध्यक्ष / सभी प्रमण्डलीय आयुक्त / सभी जिला पदाधिकारी ।

पटना-15, दिनांक 18 अप्रैल, 1998

विषय :- एल०पी०ए० / अपील एवं स्थगन आदेश विचाराधीन रहने की अवधि में वादी द्वारा अवमाननावाद दायर किये जाने की स्थिति में कार्रवाई किये जाने के सम्बन्ध में ।

महोदय,

माननीय उच्च न्यायालय द्वारा याचिका में आदेश पारित किये जाने के उपरान्त नियमतः उसका अनुपालन आवश्यक है । किन्तु कुछ मामलों में सक्षम प्राधिकार द्वारा एकल सदस्यीय बेंच के आदेश के विरुद्ध अपील या एल०पी०ए० दायर करने का निर्णय लिया जाता है और उस निर्णय के अनुसरण में एल०पी०ए० दायर कर न्यायालय से स्थगन आदेश के लिये प्रार्थना की जाती है । प्रायः ऐसा देखा गया है कि कई बार एल०पी०ए० का निस्तार होने के पहले याचिका के आवेदकों द्वारा न्यायालय के आदेश के अनुपालन हेतु अवमाननावाद दायर किया जाता है । यदि एल०पी०ए० में स्थगन आदेश पारित न हुआ हो तो वैसी परिस्थिति में सरकार के पदाधिकारियों के सामने यह प्रश्न उठता है कि याचिका में पारित आदेश का अनुपालन कर दिया जाय अथवा नहीं । इस परिस्थिति से उबरने के लिए बहुधा न्यायालय के आदेश का अनुपालन कर तत्सम्बन्धी आदेश में इस बात का उल्लेख कर दिया जाता है कि एल०पी०ए० का निर्णय होने पर तदनुसार यह आदेश प्रभावित होगा । किन्तु कई मामलों ऐसे होते हैं जिनमें यदि आदेश का अनुपालन कर दिया गया तो स्थिति में इरिभर्सिबल (irreversible) परिवर्तन हो जाता है, जिसका बाद में परिमार्जन करना संभव नहीं होता है । ऐसी स्थिति में एल०पी०ए० 'इन्फ्रक्टुअस' (infructuous) हो जाया करता है ।

उपर्युक्त विषय के संदर्भ में माननीय सर्वोच्च न्यायालय द्वारा सिविल अपील संख्या-3932/92 मॉडर्न फूड इन्डस्ट्रीज (इंडिया) लि० बनाम सच्चिदानन्द दास एवं अन्य में पारित आदेश प्रासंगिक है । इस वाद में माननीय सर्वोच्च न्यायालय ने नियमन दिया है कि यदि उच्च न्यायालय के फैसले के विरुद्ध प्रतिवादी अपील दायर कर स्थगन आदेश का अनुरोध करता है और यदि इसी बीच उच्च न्यायालय के आदेश के कार्यान्वयन के लिए अवमाननावाद दायर हो, तो न्यायालय द्वारा स्थगन आदेश हेतु प्रतिवादी की प्रार्थना या तो अवमाननावाद के पहले या उसके साथ सुनी जानी चाहिए और उस पर आदेश पारित किया जाना चाहिए । इस न्यायादेश के आलोक में वैसे मामलों में जहां एल०पी०ए० दायर है और अवमाननावाद भी दायर किया गया हो, वहां अवमाननावाद में संबंधित न्यायालय के सामने माननीय सर्वोच्च न्यायालय के इस निर्णय का उल्लेख करते हुए अनुरोध किया जाय कि एल०पी०ए० के

अन्तर्गत स्थगन आदेश की प्रार्थना पर पहले आदेश पारित किया जाय और जब तक ऐसा नहीं होता है, तब तक अवमाननवाद की प्रक्रिया स्थगित रखी जाय। कृपया इस सम्बन्ध में अपने अधीनस्थ कार्यालय को तदनुसार निदेश देने का कष्ट करें।

सुलभ प्रसंग हेतु सिविल अपील संख्या-3932/92 मॉडर्न फूड इन्डस्ट्रीज (इंडिया) लि० बनाम सच्चिदानन्द दास एवं अन्य में सर्वोच्च न्यायालय द्वारा पारित आदेश की प्रतिलिपि संलग्न है।

विश्वासभाजन,

ह०/- नवीन कुमार

सरकार के सचिव।

ज्ञापांक-3 / सी 3-3034 / 98 का० 4253

पटना-15, दिनांक 18 अप्रैल, 98

प्रतिलिपि :- महाधिक्ता, बिहार, उच्च न्यायालय, पटना को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

ह०/- नवीन कुमार

सरकार के सचिव।

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पत्र संख्या-2 / सी 3-30212 / 91 का०- 231

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग।

प्रेषक,

श्री अरुण पाठक, मुख्य सचिव, बिहार, पटना।

सेवा में,

सभी प्रमण्डलीय आयुक्त / सभी जिला दंडाधिकारी एवं समाहर्ता / सभी उपायुक्त।

पटना-15, दिनांक 18 जनवरी, 1992

विषय :- अवमानना याचिका सं.-536/91 में माननीय उच्च न्यायालय द्वारा न्यायिक पदाधिकारियों के साथ उचित एवं सौहार्दपूर्ण व्यवहार किये जाने संबंधी दिधे गये निदेश के अग्रसारण के संबं में।

महोदय,

निदेशानुसार उपर्युक्त विषयक माननीय उच्च न्यायालय द्वारा विषयान्तर्गत अवमानना याचिका संख्या 536/91, जिसमें जिला स्तर पर पदस्थापित पदाधिकारियों द्वारा अपने अधिकार क्षेत्र से बाहर एक न्यायिक पदाधिकारी के विरुद्ध उचित एवं सौहार्दपूर्ण व्यवहार नहीं किये जाने के फलस्वरूप, उत्पन्न मानहानि की स्थिति एवं एतद्संबंधी दायर अवमानना याचिका, जिसमें सुनवाई के पश्चात माननीय उच्च न्यायालय द्वारा पारित आदेश में, न्यायिक मामलों की प्रति भावनात्मक अक्षुण्णता बनाये रखने के दृष्टिकोण के तहत कहा गया है कि न्यायिक पदाधिकारी द्वारा न्यायालय संबंधी कार्यों का निपटारा जिला स्तर पर किये जाते समय, जिला स्तर पर पदस्थापित पदाधिकारियों द्वारा किसी प्रकार की बाधा उत्पन्न करना अवांछनीयता का परिचायक है। साथ ही यह कृत्य उनके गौरव एवं सम्मान को ठेस

पहुंचाता है एवं उनके द्वारा अपने कर्तव्यों के निर्वाहन में व्यवधान पैदा करता है, जिसका कुप्रभाव उनके कार्यशैली एवं कार्यक्षमता पर भी पड़ता है।

अतएव उपर्युक्त वर्णित तथ्यों एवं न्यायालय के प्रति संवैधानिक सम्मान को ध्यान में रखते हुए सरकार आपसे अपेक्षा रखती है कि आप अपने अधीनस्थ पदाधिकारियों एवं कर्मचारियों को तदनुसार निर्देश देने की व्यवस्था करें ताकि इन परिस्थितियों की पुनरावृत्ति भविष्य में नहीं हो सके।

उपर्युक्त निर्देशों का पालन, कठोरता एवं तत्परता से किये जाने संबंधी व्यवस्था सुनिश्चित की जाय। सुलभ निर्देश हेतु माननीय उच्च न्यायालय द्वारा इस मामले में पारित आदेश की प्रति भी संलग्न की जाती है।

विश्वासभाजन,

ह०/- अरुण पाठक

मुख्य सचिव, बिहार।

पटना-15, दिनांक 18 जनवरी, 1992

ज्ञाप संख्या-231

प्रतिलिपि :- गृह (आरक्षी) विभाग, बिहार, पटना / महानिदेशक, आरक्षी, बिहार, पटना को इस अनुरोध के साथ प्रेषित कि माननीय उच्च न्यायालय द्वारा दिये गये निर्देश से अपने अधीनस्थ सभी पदाधिकारियों को अवगत कराने की व्यवस्था सुनिश्चित करें।

ह०/- अरुण पाठक

मुख्य सचिव, बिहार।

पटना-15, दिनांक 18 जनवरी, 1992

ज्ञाप संख्या-231

प्रतिलिपि :- सहायक निबंधक (प्रशासन), उच्च न्यायालय, पटना को उनके पत्रांक 15296 दिनांक 18-11-91 के अनुपालन में सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह०/- अरुण पाठक

मुख्य सचिव, बिहार।

Md. Fatahyab Ali Khan,
Assistant Registrar (Administration)
HIGH COURT OF JUDICATURE AT PATNA.

To,

THE CHIEF SECRETARY, Government of Bihar.

Dated Patna, the 16th November, 1991.

Sir,

I am directed to forward herewith a copy of order No. 11 dated 9.10.91, passed in M.J.C. 536/91 for communication to all concerned.

Yours faithfully,

Sd/-

Assistant Registrar, (Admn.)

In the High Court of Judicature
M.J.C. No. 536 of 1991.

In the matter of initiation of a proceeding under Contempt of Court's Act
against S.D.O. (Civil) and S.D.O. (Roads), Pakur.

9.10.91 This *Suo motu* contempt proceeding was initiated by this Court on the basis of a letter dated 10th of April, 1991. Having regard to the importance of this case, we set out herein below the said letter in full —

No. 53/91

From

Shri Jugal Kishore Prasad,
2nd Addl. District & Sessions Judge,
Santhal Paraganas, Dumka.

To,

The Registrar,
Hon'ble High Court, Patna.

Dumka, dated the 10th day of April 1991

Sub :- Obstruction in holding circuit court at Pakur.

Sir,

I have the honour to inform that my circuit court at Pakur was scheduled for the period between 8th. to 12th. April and Room No. I of P.W.D. (Roads), Dak Bungalow, Pakur was reserved in my name from 7th to 12th instant.

But, on 8th instant, Nazir, Civil Court, Pakur gave me a letter S.D.O. (Roads), Pakur to the effect that the reservation of Room No. I in my name has been cancelled for 10th and 11th instant on account of the visit of the Law Minister, Bihar and entire Dak Bungalow was reserved for him (letter enclosed herewith).

I tried to get reservation in District Board Dak Bungalow. But the S.D.O. (Civil), Pakur sent a letter that the entire District Board Dak Bungalow has been reserved in the name of the Law Minister, Bihar from 9th onward. I could not collect that letter as it is available with the Nazir, Civil Court, Pakur.

On the 9th instant around 2.30 P.M. the S.D.O. (Civil) Pakur called on me at my Room and asked me to vacate Room No. I by the evening of the 9th itself on the ground that the Deputy Commissioner, Sahibganj and the Superintendent of Police, Sahibganj were scheduled to camp at Pakur in the night of 9th instant. He, accordingly, suggested me to shift elsewhere. I tried to impress upon him that if I were allowed to stay, at least, till the night of 9th instant I would be able to hold my court in the morning of 10th instant

and then straight way return back to Dumka, even without getting myself refreshed. But even such suggestion was not acceptable to him.

The suggestion of the S.D.O. (Civil), Pakur asking me to vacate the room for the sake of the Deputy Commissioner, Sahibganj and the Superintendent of Police, Sahibganj was so shocking to my conscience, that, in disgust, I left Pakur at 3.30 P.M. on 9.4.91.

Had I been permitted to stay for the entire week of my this tour, hearing of, at least, two Sessions Cases would have been concluded.

I, request you, sir, to kindly place this matter before his Lordship, the Hon'ble Inspecting Judge of Santhal Paraganas, and oblige.

Yours faithfully,
Sd/- Jugal Kishore Prasad,
2nd Addl. District & Sessions Judge,
Dumka, S.P.
11.4.91.

Having regard to the nature of the incident alleged, we took appropriate steps and the learned Advocate General agreed to appear to assist the Court. However, having regard to the fact that he is the Chief Law Officer of the State, today, we also requested Mr. Basudeva Prasad, a senior member of the Bar, to Assist the Court.

At the first call of the matter, Mr. Devendra Kumar Sinha, learned Standing Counsel IV, appearing on behalf of the S.D.O. (Roads) Pakur, Suresh Prasad Singh and Miss Kamlesh Jain appearing on behalf of the S.D.O. (Civil) Shri Biswanath Murmu, submitted before us that their respective clients, who are present in Court, are not justifying their conduct but tendering unconditional apology before the Court in connection with their conduct. They also offered to make a statement which was taken down and signed by the persons concerned after the same was explained to them by their lawyers. This is to the following effect :-

"At the out-set, upon the enquiry from the Court as to the stand taken by the S.D.O. (Road), Pakur Shri Suresh Prasad Singh and S.D.O. (Civil) Shri Bishwanath Murmu state as follows :-

- (1) He is not defending his actions nor pleading any justification for the same and he admit that what he has done is wrong.
- (2) He tenders unconditional apology to this Court.
- (3) He gives an assurance to this Court that he shall not behave in such a fashion in future.

It was made clear to the contemnors that no apology is being sought for at the instance of the Court. If they want to volunteer the same it is up to them and if they so like they may contest the rule of contempt on merit. They have stated that they have understood the same and they are making the aforesaid statements accordingly.

Sd/- Suresh Prasad Singh

9.10.91

S.D.O. (Road)

Sd/- Bishwanath Murmu

9.10.91

S.D.O. (Civil) Pakur.

Having regard to above we are no longer required to go into the question as to whether they are guilty of contempt. However, we shall only go into the allegations made against them and the stand taken by them in their respective affidavits, in order to consider and decide as to what sentence, if any, is to be passed in this case against the said two persons. Having regard to the nature of the affidavits and the part played by the two officers, we think it fit and proper to deal with their cases separately because the role played by them and the stand taken by them in their respective affidavits, are not the same.

So far as the S.D.O. (Road) is concerned, the role played by him would appear from the letter as aforesaid and in this context we may point out two paragraphs of his affidavit being paragraphs 8 and 11 to the following effect :-

"That again by letter no. 394 dated 9.4.91 the deponent was directed by S.D.O. (Civil), Pakur to reserve the Inspection Bungalow for 9.4.91 itself as the Deputy Commissioner, Sahebaganj and Superintendent of Police, Sahebaganj were to stay but this demand was not accepted by the deponent as the Bungalow was reserved in the name of learned Addl. Sessions Judge and the Commissioner the S.P. has got no preferential right." (Paragraph 8) "That the dependent has never requested the learned Judge to vacate the room occupied by him on 9.4.91 rather he has refused to accommodate the Deputy Commissioner and S.P. Sahebaganj on the direction of S.D.O. (Civil) Pakur as it was occupied by the learned Additional District Judge under valid reservation." (Paragraph -11).

Having regard to the same and the part played by him as alleged in the letter, and in view of the fact that at the very first opportunity, he has tendered unqualified apology, we pass the following order so far as Suresh Prasad Singh, S.D.O. (Road), Pakur, is concerned. However, even the little part played by this gentleman cannot be

supported but having regard to those paragraphs and also the unconditional apology tendered by him at the very outset, we accept such apology which we consider to be bonafide. We do not pass any sentence so far as he is concerned except warning him that he should be more cautious in future in his behaviour towards judicial officers who are performing their duties allotted by the High Court. If in future it comes to the notice of the Court that he has behaved in any manner derogatory to the prestige and dignity of the administration of justice in the State, then the High Court would not show any leniency towards him, as is being done to him in the present case. We order and direct accordingly so far as Shri Singh is concerned.

So far as Bishwanath Murmu, the then S.D.O. (Civil), is concerned, he is represented not by a Government lawyer but by a private lawyer, Miss Kamlesh Jain. We must point out that so far as the learned advocate is concerned, when the matter was called out at the first instance she has taken a fair stand by not offering any justification for the conduct of her client or the stand taken by him in his affidavit. However, on the question of sentence to be passed, the conduct of this Murmu cannot be equated with the conduct of Singh referred to above. Though he has similarly tendered unconditional apology and signed the statement and has not offered any justification for his conduct, for the purpose of considering as to what sentence, if any, is to be passed against him, we refer to few paragraphs of his affidavit. In first paragraph he has tendered unqualified apology "in case" he has committed some mistake unintentionally and unknowingly". This is unlike the manner of tender of apology by the other officer. The other relevant paragraph is paragraph-4 wherein he says that he did not come into picture anywhere at the time of allotment of the same. Under these circumstances it is surprising that he has played the role as he had done. Though in his affidavit itself, he has stated that he had nothing to do regarding allotment, in fact, he had much to do, so far as making the allotment nugatory is concerned. In this connection reference may be made to paragraphs 6, 7, 8, 9, 10 and 11 of his affidavit which are set out herein below:—

"That on 9.4.91 at about 2.30 P.M. the deponent went to the Inspection bungalow to see the arrangements for staying the Deputy Commissioner and the S.P. Sahebaganj. Reaching there the deponent learnt that the learned judge was staying in room no. 1. The deponent sought an appointment to make a courtesy call to the learned Judge which he was allowed." (Para 6).

That the learned Judge asked the deponent that he had come to hold court till 12th April 1991 but since his booking for the dates of 10th and 11th

April, 1991 was already cancelled he was puzzled to think whether he should stay there for a day or two or not as he would not be able to complete the assigned Job." (Para 7).

"That on this the deponent suggested him to come at some other time and get the work done in one stretch of time instead of doing it half. At this the learned Judge asked the deponent to manage the reservations for 2-3 days more. But the deponent humbly stated that it was beyond his capacity to do so." (Para 8.)

"That the suggestion of the deponent was perhaps not liked by the learned Judge." (Para 9.)

"That it was really beyond the capacity of the deponent to help the learned Judge in getting the reservation extended but he assured the learned Judge that he would ask the D.C. and S.P. not to come on 9.4.91. In any case the deponent never asked the learned Judge to vacate the Bungalow". (Para 10)

"That the deponent is neither authorised to get the said bungalow reserved for some one or to get it cancelled. S.D.O. (Roads) and Executive Engineer, P.W.D. is the only person to do so and in the case of the learned Judge the S.D.O. (Roads) did not cancel reservation for 9.4.91." (Para-11)

It is surprising that an officer, as in this case, in the rank of Subdivisional Officer, has the temerity to suggest to a judicial officer as to when the judicial officers will perform his judicial duty as he has supported to do in this particular case. The officers of the State Government are not probably aware of the scope of their duty and the scope of the duty of a judicial officer who has been deputed to perform judicial work by the High Court itself. This question of circuit duty arises we may point because the State Government has not considered it fit and proper to provide accommodation to all the judicial officers at the places where they are to perform their duties. It is not at the choice of the judicial officers concerned that they have to go on circuit duty but this is the fashion in which they are treated when they go on such duty. It was not part of the business of this S.D.O. to make any suggestion to this judicial officer "to come at some other time and get the work done in one stretch instead of doing in half." He has stated that the judicial officer concerned asked the deponent to manage the reservation for 2-3 days more but he had humbly "stated that it was beyond his capacity to do so." If he had no capacity either to make any allotment or to make any cancellation, he should not have taken any such step in the matter and should not have approached the judicial officer and made such improper suggestion to him as he had done. He had the cheek to mention

in this affidavit that his suggestion "was perhaps not liked by the learned Judge". It cannot be liked by any judicial officer or any same person. We do not like it either. To make such suggestion was itself insane, improper, insulting and highly illegal.

As we said, we are examining this affidavit only for the purpose of considering the sentence, if any, to be passed. In this connection Mr. Basudeva Prasad has brought to our attention a Division Bench Judgement of the Calcutta High Court in *the State Versus Debabrata Bandopadhyay*, reported in A.I.R. 1964 Calcutta 572, where the facts, though exactly not the same but some how similar. There also the question involved was removal of a judicial officer from a circuit house at the instance of the District Magistrate. There the Court passed the order and sentence to the following effect :—

"On the same facts and on the same court holds the Nazir also guilty of contempt and sentences him to a fortnights simple "imprisonment but we are that sentence. We make no order for costs against the Nazir because he acted under the orders of the District Magistrate.

This Court however will continue to do its duty and administer justice and if possible to temper it with mercy. Having regard to the utter immaturity displayed by this District Magistrate, having regard to his extreme youth, which we hope will be better employed in the public service elsewhere not as the ruler of a district, and having regard to the apology which he has ultimately tendered on the last day of hearing of the Rule and at its conclusion, this Court makes the following order :

"This Court makes the Rule absolute and holds this District Magistrate guilty of gross contempt of the subordinate court, sentences him to a fortnights simple imprisonment but out of mercy to him remits that punishment by accepting his belated apology under the first provision of Section 4 of the Contempt of Courts Act, 1952. The Rule is therefore made absolute accordingly by holding (i) both the District magistrate and his Nazir guilty of the contempt charged, (2) by sentencing each to a fortnights simple imprisonment, (3) by remitting the "sentence in each case by accepting their respective apologies and (4) by directing the District magistrate in these proceedings to bear and pay his own costs and the Nazir's cost personally."

Mr. Prasad has submitted that in order to maintain the dignity and prestige of judiciary we should pass a similar order.

We have, accordingly, considered the question so far as this officer is concerned. We have noticed that his behaviour and conduct at the particular occasion was different from the other officer's. His affidavit is also different in nature. In this case we should point out that it is a clear case of interference in administration of justice whereby, on account

of this high handed act on the part of this officer, a particular judicial officer was prevented from performing his judicial duty. The judiciary must not face such kind of threat in the performance of its duty. It is more important because it involves the subordinate judiciary. The judicial officers constituting the subordinate courts are not situated in the same advantageous position as the High Court Judges, who are and should be in a position to maintain the prestige and dignity of the judiciary having regard to the constitutional position held by them but the other judicial officers in a state need greater protection, particularly in performance of their duties. Accordingly, it is the duty of the High Court, under whose supervision and control these officers perform their judicial duties, to see that these officers are allowed to perform their duties in consonance with the prestige and dignity which is attached to the office which they hold. We are more concerned with the prestige and dignity of the administration of justice in this State and not merely with the question of humiliation of a particular officer.

Having regard to the same, we think that Mr. Basudeva Prasad is justified in making his submission regarding sentence. The officer wanted to please his superior officers i.e., the Superintendent of Police and the Deputy Commissioner. He must remember that in order to please his superior officer, he must not behave in a fashion which is derogatory to the prestige of the judiciary. If he had given protection to the judicial officer concerned and for that reason if any action had been taken against him by his superior officer, then this Court would have come forward to give him protection against any high handedness on the part of his superior officers. But he had chosen to care more for his superior officers than the cause of Justice. Having regard to this, we would have passed a very strong and stiffer sentence had it not been for the fact that at the very outset, he had tendered this unconditional apology and in acknowledgement of the same he has put his signature on and endorsed the statement without trying to make any further attempt to justify his conduct. In that view of the matter, we pass the following orders :

This Court makes the rule absolute and holds these two officers guilty of contempt of the subordinate court. In the facts and circumstances of this case, in view of the apology tendered by the Subdivisional Officer (Roads), Mr. Suresh Prasad Singh, and having regard to the nature of the allegations made against him and his overall conduct, the Court does not think it fit and proper to pass any sentence in his case, apart from administering the warning, as we have indicated above.

So far as Mr. Bishwanath Murmu, S.D.O. (Civil) is concerned, we pass the following sentence :

We sentence him to a week's simple imprisonment but we remit the sentence

having regard to the apology tendered by him at the very first opportunity. However, we administer a similar warning to him.

Let a copy of this order be furnished to the learned advocates appearing in this case. Let copies of this order be also circulated to all the District Judges, including the Judicial Commissioner, Ranchi, for the purpose of bringing the same to the attention of all the judicial officers in their respective districts with an instruction to bring to the attention of the Court any attempt made by any officer of the Government in derogation of the prestige and dignity of the judiciary in this state.

A copy of this order be also forwarded to the Chief Secretary of the State Government so that this matter may be brought to the attention of all the Commissioners, District Magistrates / Collectors / Deputy Commissioners of each and every district concerned with a direction that they and the officers / employees under them must behave in a proper manner and fashion while dealing with the judicial officers. A copy of the order be also sent to the Director-General of Police, Bihar, so that he may bring the matter to the attention of all police personnel, including D.I.Gs. and Superintendents of Police of all the districts with similar directions.

We place on record our sincere appreciation of the stand taken by the learned Advocate-General and Mr. Basudeva Prasad. We particularly place on record our appreciation of the assistance given by Mr. Basudeva Prasad, and Senior member of the Bar, who appeared as *amicus curiae* in the matter and who made his submissions ably and fairly with the sole intention of upholding the dignity and prestige of the judiciary in the State.

Let copies of this order be also furnished to the learned Advocate-General and Mr. Basudeva Prasad.

Sd/- B.C. Basak
Sd/- G.C. Bharucha

[3]

पत्र संख्या-7 / च०प० 1-103 / 90 का० - 6901

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग

प्रेषक,

श्री कमला प्रसाद, मुख्य सचिव, बिहार।

सेवा में,

सरकार के सभी विभागीय सचिव / सभी विभागाध्यक्ष।

पटना-15, दिनांक 14 मई, 1991

विषय :- पटना उच्च न्यायालय में दायर मुकदमों एवं पारित आदेशों पर शीघ्र कार्रवाई करने के संबंध में ।
महाशय,

निदेशानुसार उपर्युक्त विषय पर कहना है कि सरकार के विरुद्ध उच्च न्यायालय में दायर होने वाले वादों की संख्या निरन्तर बढ़ रही है । फलस्वरूप आपसे अपेक्षा की जाती है कि आप अपना विशेष ध्यान ऐसे वादों एवं आदेशों में दिया करेंगे ताकि समय पर सरकारी अधिवक्ताओं को सही निदेश मिल सके, समय पर प्रतिशपथ पत्र दायर हो सके एवं दिये गये निर्णयों का समय पर कार्यान्वयन किया जा सके । परन्तु महाधिवक्ता, बिहार द्वारा दी गयी सूचना के अनुसार विभागों में यह आदत सी बनती जा रही है कि वे अपने स्तर से समय पर समुचित कार्रवाई नहीं करके विलम्ब का दोषारोपण अन्य विभागों पर कर देते हैं । फलस्वरूप आये दिन अवमानना के मामलों में उच्च न्यायालय में 3-4 विभागीय सचिवों को बुला लिया जाता है जिससे सरकार के काम की हानि होती है ।

2. यह सही है कि सरकार के विरुद्ध अधिकतर वादों में वादीगण सरकार के रेगुलेटरी विभागों (यथा, कार्मिक विभाग, वित्त विभाग आदि) को भी प्रतिवादी बना दिया करते हैं । परन्तु वास्तव में प्रायः सभी मामलों में ये विभाग अथवा अन्य विभाग एक प्रोफोर्मा पार्टी रहते हैं मूलतः हर वाद किसी एक ही विभाग से संबंधित रहता है । लेकिन जब एकाधिक विभाग प्रतिवादी रहते हैं तो मूलतः संबंधित प्रशासी विभाग ऐसे मामलों में शीघ्रतापूर्वक कार्रवाई नहीं करते हैं ।

3. कार्यपालिका नियमावली के नियमों के अन्तर्गत प्रत्येक विभाग को उनका कार्यक्षेत्र निर्धारित कर दिया गया है । यह विभाग एवं उसके सचिव का दायित्व बनता है कि वह अपने काम का निबटारा करें । किसी विभाग से स्वीकृति प्राप्त करना भी उनका दायित्व बनता है । समय पर काम नहीं कर इस प्रकार मुकदमों में शपथ पत्र दायर करना उत्तरदायित्व की कमी का ही द्योतक है ।

4. अतः यह निर्देश दिया जाता है कि प्रत्येक विभाग इस संबंध में अपने दायित्व को जिम्मेवारी से, समय पर एवं तत्परतापूर्वक निभाए । यदि किसी विभाग को यह प्रतीत होता हो कि सरकारी अधिवक्ता को रिट एडमिशन के समय आवश्यक निर्देश दिया जाना, प्रतिशपथ-पत्र दायर किया जाना अथवा फैसले के कार्यान्वयन में किसी विभाग से भी सहमति अथवा परामर्श की आवश्यकता है तो वे जैसे मामलों में संबंधित सचिका वैसे प्रशासी विभाग को अविलम्ब भेजकर उन विभागीय सचिवों / विभागाध्यक्षों को फोन से भी इस आशय की सूचना देंगे । यदि एक दो दिनों में सचिका अप्राप्त रहती है तो संयुक्त सचिव अथवा उनसे वरीय पदाधिकारी को वहां भेजेंगे तथा पुनः फोन से स्मारित करेंगे ।

5. ऐसे मामलों में जहाँ एकाधिक विभाग / निदेशालय सन्निहित हों, वहां पर मूल प्रशासी विभाग द्वारा प्रतिशपथ-पत्र तभी दायर किया जायगा जब जैसे तथ्य-कथन अथवा प्रतिशपथ-पत्र के प्रारूप को महाधिवक्ता द्वारा देख लिया जायगा । महाधिवक्ता जहाँ भी उचित अथवा समझेंगे, वैसे मामलों में मंत्रिमंडल सचिवालय के माध्यम से मुख्य मंत्री का आदेश प्राप्त करेंगे ।

6. उपर्युक्त आदेशों का अविलम्ब एवं कड़ाई से पालन किया जाय ।

7. इस पत्र की प्रतिलिपि महाधिवक्ता, बिहार को भी दी जा रही है ।

विश्वासभाजन,

ह०/- कमला प्रसाद

मुख्य सचिव, बिहार ।

ज्ञापांक-7 / च०प० 1-103/90 का० - 6901

पटना-15 दिनांक 14 मई, 1991

प्रतिलिपि :- महाधिवक्ता, बिहार को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित ।

ह०/- कमला प्रसाद
मुख्य सचिव, बिहार ।

[4]

पत्र संख्या-7 / च०प० 1-103 /90 का० - 6951

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग

प्रेषक,

श्री अशोक कुमार चौधरी, सरकार के सचिव ।

सेवा में,

सरकार के सभी विभागीय सचिव / सभी विभागाध्यक्ष ।

पटना-15, दिनांक 12 जून, 1990 ।

विषय :- पटना उच्च न्यायालय में दायर मुकदमों एवं पारित आदेशों पर शीघ्र कार्रवाई करने के संबंध में ।

महोदय,

निदेशानुसार उपर्युक्त विषय पर कार्मिक एवं प्रशासनिक सुधार विभाग के पत्र संख्या-5228, दिनांक 15-5-90 के प्रसंग में कहना है कि महाधिवक्ता कार्यालय से सभी विभागों के मुकदमों से संबंधित-पत्र / आदेश एक साथ प्राप्त कर अगले ही दिन संबंधित विभागों के सचिव एवं विभागाध्यक्षों के सचिव / निजी सहायक अथवा यदि वे नहीं रहें तो उनके प्रकोष्ठ में कार्यरत किसी अन्य निजी सहायक को प्राप्त कराये जाने का आदेश दिया गया है । परन्तु ऐसी सूचना मिली है कि दिये गये आदेश के बावजूद भी विभागीय सचिवों / विभागाध्यक्षों के सचिव / निजी सहायकों या उनके प्रकोष्ठ में कार्यरत अन्य निजी सहायकों द्वारा पत्र प्राप्ति में एवं अपना पदनाम अंकित करने में आनाकानी की जाती है, इससे प्रारम्भ की गयी व्यवस्था में व्यवधान होता है ।

2. अतः, अनुरोध है कि अपने सचिवों / निजी सहायकों आदि को मुकदमों से संबंधित-पत्र एवं न्यायालय का आदेश-पत्र प्राप्त करने एवं प्राप्तिकर्ता को अपना पदनाम अंकित करने हेतु अपने स्तर से आवश्यक निदेश देने की कृपा करें ताकि ऐसे महत्वपूर्ण मामलों में किसी स्तर पर ढिलाई न हो ।

विश्वासभाजन,

ह०/- अशोक कुमार चौधरी
सरकार के सचिव ।

(500)

[5]

पत्र संख्या-19786-का०

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग ।

प्रेषक,

श्री के०ए० रामासुब्रह्मण्यम, मुख्य सचिव, बिहार सरकार, पटना ।

सेवा में,

सरकार के सभी प्रधान सचिव / सचिव / सभी विभागाध्यक्ष / सभी प्रमण्डलीय आयुक्त / सभी जिला पदाधिकारी ।

पटना-15, दिनांक 27 अक्टूबर, 1978 ।

विषय :- पदाधिकारियों के स्थानान्तरण / पदस्थापन एवं निलम्बन आदेश के विरुद्ध न्यायालय का स्थगन आदेश ।

महोदय,

निदेशानुसार मुझे यह कहना है कि आजकल सरकारी सेवारत कर्मचारी एवं पदाधिकारी के बीच एक सामान्य-सी बात हो गयी है कि वे स्थानान्तरण, पदस्थापन, प्रोन्नति तथा निलम्बन आदि छोटे-छोटे प्रशासनिक मामलों को लेकर अधीनस्थ न्यायालयों में मुकदमा दायर कर दिया करते हैं और वहां से स्थगन आदेश भी प्राप्त कर लिया करते हैं जिसके फलस्वरूप सरकार के लिये सुचारु रूप से प्रशासन एवं अनुशासन बनाये रखने में कठिनाइयां तथा समस्याएँ उत्पन्न हो जाया करती हैं । इस सम्बन्ध में विचार करने पर ऐसा मालूम पड़ता है कि यदि सरकारी अधिवक्तागण सिविल प्रक्रिया संहिता 1976 की धारा 80 की उप-धारा (2) के प्रावधान की ओर समुचित ढंग से न्यायालयों का ध्यान आकृष्ट करते और इस बात पर बल देते कि बिना इस प्रावधान के अनुपालन के स्थगन आदेश पारित नहीं किया जा सकता है तो अधिकांश मामलों में स्थगन आदेश पारित नहीं हो पाते और इस प्रकार समस्याओं का बहुत हद तक समाधान हो जाता । लेकिन वस्तुतः सरकारी अधिवक्तागण या तो इस प्रावधान के महत्त्व को समझते ही नहीं और यदि समझते हैं तो इसका समुचित ढंग से उपयोग नहीं करते हैं ।

2. उपर्युक्त स्थिति में आपसे अनुरोध है कि आप सरकारी अधिवक्ताओं को ऐसा निदेश दे दें कि वे उपर्युक्त प्रावधान की ओर समुचित ध्यान दें और न्यायालयों से इसका अनुपालन करने का अनुरोध करें । यदि इस अनुरोध के बावजूद न्यायालयों द्वारा उपर्युक्त प्रावधान का अनुपालन किन्हे बिना स्थगन आदेश पारित हो जाय तो वैसी दशा में पारित स्थगन आदेश के विरुद्ध अपील दायर करने की दिशा में समुचित समय के भीतर तुरत कार्रवाई करें ।

विश्वासभाजन,

के०ए० रामासुब्रह्मण्यम,

सरकार के मुख्य सचिव।

□ □ □