

(2001) 04 JH CK 0012

Jharkhand High Court

Case No: Writ Petition (PIL) No. 2501 of 2001

Rama Sujit Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: April 23, 2001

Acts Referred:

- Bihar Reorganisation Act, 2002 - Section 65
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Vinod Kumar Gupta, C.J; Vishnudeo Narayan, J

Bench: Division Bench

Advocate: Rajesh Kumar, for the Appellant; M.M. Banerjee, for State, P.K. Prasad, for Central Government and A. Allam and Nehala Sharmin for State of Bihar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This is a very peculiar case where a "Minister of the Government of Jharkhand apparently, either because of total ignorance or on account of lack of understanding on his part with respect to the true and correct legal and constitutional position, in violation of a specific, express and mandatory provision of law, has taken an action which was wholly impermissible and totally outside the purview and bounds of statutory parameters. This action he took in purported exercise of his executive power.

2. Section 65 of the Bihar Re-organisation Act, 2000 clearly stipulates and provides that the Companies specified in the Ninth Schedule to this Act shall continue to function in the areas in which these have been functioning immediately before the appointed day (15.11.2000). The continuous functioning of the Companies mentioned in the Ninth Schedule in the said area is subject only to the specified stipulations that if, in the meanwhile, either under any law, or on the basis of any

agreement arrived at between the two States, there is any change in the situation, or a direction is issued on the subject by the Central Government.

Section 65 of the Act reads thus :--

"65. Precisions as to certain companies.--(1) Notwithstanding any thing contained in the foregoing provisions of this part, each of the companies specified in the Ninth Schedule to this Act shall, on and from the appointed day and until otherwise provided for in any law, or in any agreement among the Successor States, or in any direction issued by the Central Government, continue to function in the areas in which it was functioning immediately before the day; and the Central Government may, from time to time, issue such directions in relation to such functioning as it may deem fit, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law.

(2) Any direction issued under Sub-section (1) in respect of a Company referred to in that sub-section, may include directions :

(a) regarding the division of the interest and shares of existing State of Bihar in the Company among the successor States;

(b) requiring the reconstitution of the Board of Directors of the Company so as to give adequate representation to both the successor States,"

3. The Bihar State Hydro-electric Corporation (BSHEC) is one of the companies mentioned in the Ninth Schedule. Vide impugned communication dated 16.2.2001, respondent No. 3 who is the Minister for Energy, Government of Jharkhand, sent a note directly on his official stationery to the Managing Director, BSHEC asking him to refrain from functioning in the territories of the Jharkhand State without the specific permission of the Government of Jharkhand. This letter actually opens up with an observation of the Minister that the Jharkhand State is contemplating to set up its own hydro-electric Corporation., The letter was written on 16.2.2001. It is a difficult matter altogether that despite 15 months having since elapsed, admittedly, so far the State of Jharkhand has not set up its own hydro-electric Corporation.

4. Section 65 of the Re-organisation Act clearly enjoins upon the Government of Jharkhand the statutory duty to allow the BSHEC to continue functioning in the areas now forming part of the State of Jharkhand. The legislative intent behind enacting Section 65 was very clear. The intent was that the successor State of Jharkhand should constitute and set up its own hydro- electric Corporation. To tide over the transitory phase, to cater to the situation in the interregnum, however, the Legislature in Section 65 provided that till the Jharkhand State constitutes its own Hydro-electric Corporation, B.S.H.E.C. shall continue to function in the territories of Jharkhand State as heretofore.

Nothing prevented the Government of Jharkhand from constituting and setting up its own Hydro-electric Corporation. It is a strange, painful and surprising paradox

that neither the State Government has set up its own hydro-electric corporation, nor it has allowed the corporation already functioning to perform its duties within the territory of the State of Jharkhand. By writing the aforesaid communication to the Managing Director of the Bihar State Hydro-electric Corporation, respondent No. 3 has committed a patent illegality, because he has violated the specific, mandatory and statutory provision as contained in Section 65 of the Act. The affidavit filed by the Under Secretary, Energy Deptt. Is a very feeble attempt on the part of the State Government to unduly Justify the aforesaid letter of the Minister. The averments contained in para 5 of the affidavit of the under Secretary actually run counter to the specific language in the note of the Minister. The affidavit of the under secretary. Energy Ministry, filed on behalf of the Union of India however depicts a correct and accurate picture A reading of paragraphs 11 to 13 of this affidavit clearly suggests that the Central Government is also of the opinion that respondent No. 3 did not act properly and in accordance with Section 65 of the Act by writing the aforesaid note.

5. As long as the Government of Jharkhand does not set up its own hydro-electric corporation, it has no option but to allow the BSHEC to continue to function in the territory of the State of Jharkhand. Why the Government of Jharkhand is not setting up its corporation is something with which it must be concerned. Does the Government of Jharkhand not consider it to be in public interest that the State of Jharkhand constitutes its own Hydro- electric Corporation and stops depending on the Corporation of another State? Section 65 of the Act did not prevent Jharkhand State from constituting its own Corporation. It actually dearly implies that the State of Jharkhand must constitute its own Corporation. But the Government of Jharkhand has been sleeping over the matter. The neglect on the part of the Jharkhand State in not setting up the corporation is clearly against the public interest of the Jharkhand State. On both the counts therefore, the Government of Jharkhand is jeopardising the public interest: it is not setting up its own corporation and is not allowing the BSHEC to function in the State of Jharkhand.

6. The action of the Minister being totally contrary to Section 65 of the Act is quashed and set aside. We leave it open to the State of Jharkhand, in the light of the observations made hereinabove to consider the desirability of taking any appropriate action in the matter.

With the aforesaid directions and observations the petition is allowed. The impugned communication is set aside with all consequences.