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**(2002) 11 PAT CK 0035**

**Patna High Court**

**Case No:** L.P.A. No. 1059 of 2000 with CWJC No. 5483 of 2001

Bihar Rajya Zila  
Parishad Abhiyantran  
Seva Sangh and  
Others

APPELLANT

Vs

Raj Deo Sinha and  
Another

RESPONDENT

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**Date of Decision:** Nov. 25, 2002

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### **Judgement**

Ravi S. Bhavan, C.J.

This letters Patent Appeal has been filed against the order of 21st July, 2000 on CWJC No. 6299/2000, Bihar Rajya Zila Parishad Abhiyantran Seva Sangh and Ors. v. The State of Bihar and Ors. On a claim of petitioners that they stood absorbed in the Road Construction Department and that this is not being done, the petitioners-appellants had prayed for a writ which the learned Judge declined to grant. According to the learned Judge the petitioners ought to have moved an application for initiating contempt proceedings on the judgment which they rely upon. The writ petitioner was dismissed.

2. The petitioners were relying on a judgment which was delivered on an earlier and another writ petitioner, CWJC No. 1371/87, filed by the same petitioners, this is a judgment dated 8-2-2000 delivered by their lordships Hon"ble B.P. Singh & Hon"ble A.K. Ganguly, JJ. The petitioners-appellants were seeking, in effect, that another writ of mandamus be issued for the compliance of the judgment dated 8-2-2000. The operative portion of the direction are being reproduced, as in paragraph 9 of the Judgment :

As would be apparent from the facts noticed above, there cannot be any serious dispute to the proposition that Assistant Engineers working under the Zila Parishads must have avenues of promotion so that their efficiency is increased and they are given what is due to them in view of the various decisions of the Supreme Court. The State has failed to take a decision despite assurance given to this Court, and for about two years this Court has waited for the Government to take a decision. We are of the view that this Court may

not be justified in adjourning the matter any further. We, therefore, disposed of this writ petition with the following directions.

(i) The State Government shall frame appropriate rules providing for promotional avenues to the Assistant engineers and Junior Engineers employed in the Zila Parishads of the State of Bihar to the same extent as is provided to the members of other engineering services of the State, such as the engineering cadres of the Road Construction department. These rules shall be framed within a period of four months from the date on which a copy of this order is produced before respondent No. 1, the Chief Secretary of the Government of Bihar. Upon such rules being framed, the cases of Assistant Engineers and Junior Engineers shall be considered for promotion in accordance with such rules forthwith.

(ii) In a case the State of Bihar fails to frame the rules as directed, it will be open to the Junior Engineers and Assistant Engineers employed in the Zila Parishads to opt for absorption in an equivalent cadre maintained in the Road Construction department. On such option exercised, the Junior Engineers/Assistant Engineers shall be given appropriate seniority, having regard to their length of service, in the cadres in which they are absorbed. If necessary, they shall be granted promotion to higher posts based upon their length of service and suitability as evident from their record of service. In doing so, the length of service rendered by such Assistant Engineers/Junior Engineers in the Zila Parishads shall be taken into account. If any of the Junior Engineer/Assistant Engineer retires within this period of four months, they shall be deemed to have been transferred to the equivalent cadre in the Road Construction department and their seniority shall be reckoned by reference to their length of service as aforesaid. However, if the rules are framed as directed, their cases shall be considered in the light of the rules framed.

3. The issue still lingers. While the petitioners still submit in their Letters Patent Appeal that they are entitled to yet another writ to require the State-respondent to comply with the judgment, the learned Judge on the subsequent writ petition relegated the petitioners to initiate contempt proceedings and enforce the order being violated. To that extent the learned Judge was not incorrect that this matter cannot go on ad infinitum and an order of the High Court not being complied which ought to be enforced. But, on this technicality justice still, eludes the petitioners. The disease is beyond contempt proceedings.

4. This Court in itself can initiate contempt proceedings against the State-respondent as there is a judgment of a Division Bench in CWJC No. 1371/87 dated 8-2-2000 which has not been complied with. This judgment cannot be permitted to rust but the proceedings in contempt will mean issue of notices lining up the respondents concerned and perhaps framing charges against them, hearing their defence and then come to a conclusion whether the order of the High Court has in fact been defied and if the defence is unsuccessful the respondents may be convicted if they fail purge the contempt. The exercise to purge the contempt may be a constitutional obligation today to examine the issues and fall in line with the Constitution of India. Thus, given an occasion the High

Court would like to avoid proceedings in contempt because there is a clear cut solution now which, the Court is affraid, the State-respondent cannot avoid.

5. A little back ground is required to understand what the issue about. Under the Bihar and Orissa Self Government Act, 1885 were framed.rules known as the Bihar District Engineers Service Rules, 1957. There is no issue that there was meant to be a cadre in Bihar of District Engineers. Neither the State-respondents can run away from the aspect that these District Engineers were meant to be serve the local self Government in its local spheres, which are the districts. For whatever it was worth the Act was providing for execution of plants for local self Government in the State of Bihar and Orissa in 1885, one hundred and seventeen years ago. The absorption of engineers and how many of this cadre would be absorbed into the engineering services of the State was also an aspect considered by the State Government between the Bihar Engineering Service Rules, 1939 and the Bihar District Engineers Service Rules, 1957. This aspect of the matter can also be seen from a judgment of the Supreme Court [Vinay Kumar Verma and others Vs. State of Bihar and others](#) .

6. An aspect which the Court has mentioned that the State of Bihar cannot avoid now, certain constitutional obligations, perhaps had been merely noticed by the State Government but not all of it and not acted upon sincerely. On record are file notings (Annexure-5) in the supplementary affidavit of the appellants. These are notings in a Government Order contained in Memo No. 6074 dated 17-9-1999. The notes were made between 25-8-1999 and 27-8-1999, noticing that amendments had been made to the Constitution of India. Apart from this nothing more is noticed. The only aspect which has been recorded is that regard being had to circumstances that the Panchayats and Zila Boards have to function, the matter relating to the promotions of the engineers, in context, be considered. If the matter had been considered carefully and objectively in 1999 itself the issues and the problem of stagnation amongst the engineers of the district without promotion would have been resolved.

7. Subsequent to these file notings the State enacted rules known as the Bihar Zila Board Kanya Abhiyanta Evam Assistant Engineer Service/Samvarg 2000, referred hereinafter as Rules of 2000. These rules were published in the Gazette dated 15th December, 2000. A cadre of engineers was being considered whether district, assistant or junior engineers is not relevant at present. While creating a cadre of district engineers clearly for institutions of local self Government the State Government fixed the strength of Junior Engineers, Assistant Engineers and District Engineers. 50 posts of Junior Engineers, 26 Assistant Engineers and 4 District Engineers were sanctioned. Clearly, something was in error and not in conformity with planning for local self Government. Four District Engineers for 37 districts of Bihar, the error was manifest and apparent.

8. At this stage it needs to be noticed that the State Government in 1965 i. e. 37 years ago was attempting to cater for planning under the Community Development and Panchayat Directorate. This can be seen from the Government order dated 9-2-1965,

Annexure-2 to the supplementary affidavit of the appellants. This department to be known as Rural Engineering Organisation, perhaps was ment for community development for local Government in the Panchayats. This Government order notices the District Engineers working under the District Boards whereas in 1885 the then provincial Government had already created Local Self Government. It is surprising that in 2002 there is no set up which takes care of local self Government as a whole. Clearly one has to look at the Constitution of India, as providing for institutions of self Government, of which planing is part, as a constitutional obligation. The notings of 25-8-1999 and 27-8-1999 make no reference to the aspect that in the context of the Panchayats and Municipalities, Chapter IX and IX-A of the Constitution of India, these are institutions of self Government. Planning and development within these institutions is inherent to self Government within these institutions.

9. Under examination is structuring the cadre of district engineers by ignoring the concept of self Government mandated by the Constitution of India. What is the object and purpose for creating a cadre of engineers for the districts? In reference to the Panchayats and Municipalities and all other local bodies the Dinar Panchayat Raj Act, 1993, in effect, refers to Article 243ZD of the Constitution of India. The Bihar Municipal Act, 1922 also refers t6 the Constitution of India in the context of self Government.

10. When the constitution was amended by the 73rd and 74th amendments local self Government became a basic to be feature, besides a mandate, of the Constitution. Thus, in the Constitution the chapters on Panchayats and Municipalities were inserted as Chapters IX and IX-A.

11. Article 243G and Article 243W made reference to powers, authority and responsibilities of Panchayat and Municipalities respectively. The subject and the items which came to the sphere of Panchayats and Municipalities are referred to in the XI and XII Schedule of the Constitution of India. The plans were to be made out as integrated development plans for the Panchayats and the Municipalities. The function of participating in development, making draft plans has been placed as the responsibility of the District Planning Committee (Article 243 ZD). No planning within the Panchayats and Municipalities can go ahead without reference to the District Planning Committee. In this regard Article 243ZD reads :

243 ZD. Committee for district Planning.--(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect;

(a) The composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled: Provided that not less than four-fifth of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committee;

(d) the manner in which the Chairpersons of such committees shall be chosen.

(3) Every District Planning committee shall, in preparing the draft development plan :

(a) have regard :

(i) matters of common interest between the Panchayat and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

12. The District Planning Committee is referred to in the Bihar Panchayat Raj Act, 1993 in Section 134, This Section is reproduced :

134. District Planning Committee.--(1) The Government shall constitute in every district a District Planning Committee to consolidate the plans prepared by the Zila Parishad, Panchayat Samitis, Gram Panchayats, Nagar Panchayats, Municipal Councils and Municipal Corporations in the district and to prepare a draft development plan for the district as a whole.

(2) The District Planning Committee shall consist of :

(a) members of the Lok Sabha who represent the whole or part of the district;

(b) The members of the Rajya Sabha who are registered as electors in the district;

(c) Adhyaksha of the Zila Parishad;

(d) Mayor or the President of the Municipal Corporation or the Municipal Council respectively, having jurisdiction over the head quarters of the District;

(e) Such number of persons not less than four-fifth of the total number of members of the Committee as may be specified by the Government, elected in the prescribed manner

from amongst the members of the Zila Parishad, Nagar panchayats and Councillors of the Municipal Corporation and the Municipal Councils in the district, in proportion to the ratio between the population of the rural areas and of the urban areas in the district.

(3) All the members of the State Legislative Assembly whose constituencies lie within the district, the members of the State Legislative Council who are registered as electors in the district and the Deputy Commissioner/District Magistrate and the Chairman of the District Co-operative Bank/Land Development Bank shall be permanent invitees of the Committee.

(4) The Chief Executive Officer shall be the Secretary of the Committee.

(5) The Adhyaksha of the Zila Parishad shall be the Chairman of the District Planning Committee.

(6) The District Planning committee shall consolidate the plans prepared by the Zila Parishad, Panchayat Samitis, Gram Panchayats, Nagar Panchayats, Municipal Councils and the Municipal Corporations in the district and prepare a draft development plan for the district as a whole.

(7) Every District Planning Committee shall in preparing the draft development :

(a) Have regard to :

(i) the matters of common interest between the Zila Parishad, Panchayat Samitis, Gram Panchayats, Nagar Panchayats, Municipal Corporations and Municipal Councils in the district including local planning, sharing of water and other physical and natural resource, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise.

(b) consult such institutions and organisations as the Government may order specify.

(8) The Chairman of every District Planning Committee shall forward the development plan, as recommended by such Committee to the Government

13. The District Planning Committee in the Bihar Municipal Act, 1922 is referred to in Section 51-B. This Section is reproduced :

51-B. Committee for District Planning.--(1) There shall be a District Planning committee to consolidate the plans prepared by the Panchayats, the Municipal Corporation, Municipal Council and Nagar Panchayat in the district and to prepare a draft development plan for the district as a whole.

(2) The provisions of Section 134 of the Bihar Panchayat Raj Act, 1993 (Bihar Act 19, 1993) shall apply in respect of composition, functions, election of Chairperson, duties etc.

of the District Planning Committee).

Though it would have been appropriate that a detailed reference to the District Planning Committee as is referred to in Section 134 of the Bihar Panchayat Raj Act, 1993 should have been repeated in Section 51-B, also.

14. The subject-matter of planning by the Panchayats, Panchayat Samiti and the Zila Parishad are referred to in Section 22 (Panchayats), Section 45 (Panchayat Samiti) and Section 71 (Zila Parishad). These Sections are reproduced :

22. Functions of Gram Panchayat--Subject to such condition as may be specified by the Government from time to time, the Gram Panchayat shall perform the functions specified below :

(i) General Functions :

- (1) Preparation of annual plans for the development of the panchayat area;
- (2) Preparation of annual budge;
- (3) Power to take up relief works in natural calamities;
- (4) Removal of encroachments on public properties;
- (5) Organising voluntary labour and contribution for community works;
- (6) Maintenance of essential statistics of village (s).

(ii) Agriculture, including Agriculture Extension

- (1) Promotion and development of agriculture and horticulture;
- (2) Develbpment of waste lands;
- (3) Development and maintenance of grazing lands and preventing their unauthorised alienation and use.

(iii) Animal Husbandry, Dairy and Poultry :

- (1) Improvement of breed of cattle, Poultry and other livestock;
- (2) Promotion of dairy farming, poultry and piggery;
- (3) Grassland development.

(iv) Fisheries: Development of fisheries in the village(s).

(v) Social and Farm Forestry, Minor Forest Produce, Fuel and Fodder;

(1) Planting and preservation of trees on the sides of roads and other public lands under its control;

(2) Fuel plantations and fodder development;

(3) Promotion of farm forestry;

(4) Development of Social Forestry.

(vi) Khadi, Village and Cottage Industries :

(1) Promotion of rural and cottage industries;

(2) Organisation of awareness camps, seminars and training programmes agricultural and industrial exhibitions for the benefit of rural areas.

(vii) Rural Housing :

(1) Distribution of house sites within its jurisdiction;

(2) Maintenance of records relating to house sites and other private and public properties.

(viii) Drinking Water :

(1) Construction, repair and maintenance of drinking water wells, tanks, ponds and hand pumps;

(2) Prevention and control of water pollution;

(3) Maintenance of rural water supply schemes.

(ix) Roads Buildings, Culverts, Bridges, Ferries, Waterways and other means of communication :

(1) Construction and maintenance of village roads, drains and culverts;

(2) Maintenance of Buildings under its control or transferred to it by the Government or any public authority;

(3) Maintenance of boats, ferries and waterways.

(x) Rural Electrification, including distribution of electricity & providing for and maintenance of lighting public streets and other places.

(xi) Non-Conventional Energy Source :



- (1) Promotion and development of non-conventional energy schemes;
- (2) Maintenance of community non-conventional energy devices, including bio-gas plants;
- (3) Propagation of improved chulhas and other efficient energy devices.

(xii) Poverty Alleviation Programme :

- (1) Promotion of public awareness and participation in poverty alleviation programmes for fuller employment and creation of productive assets;
- (2) Selection of beneficiaries under various programmes through Gram Sabhas;
- (3) Participation in effective implementation and monitoring.

(xiii) Education, including primary and secondary Schools :

- (1) Promotion of public awareness and participation in primary and secondary education;
- (2) Ensuring full enrollment and attendance in primary Schools and its management.

(xiv) Adult and non-formal education--Promotion of adult literacy.

(xv) Libraries--Village libraries and reading rooms;

(xvi) Cultural Activities--Promotion of social and cultural activities;

(xvii) Markets and Fairs--Regulation of fairs (including cattle fairs) and festivals.

(xviii) Rural Sanitation :

- (1) Maintenance of general sanitation;
- (2) Cleaning of public roads, drains, tanks, wells and other public places;
- (3) Maintenance and regulation of burning and burial grounds; It;
- (4) Construction and maintenance of public latrines;
- (4) Disposal of unclaimed corpses and carcasses;
- (5) Management and control of washing and bathing ghats.

(xix) Public Health and Family Welfare :

- (1) Implementation of family welfare programmes and Public Health Centres;
- (2) Prevention and remedial measures against epidemic;

(3) Regulation of sale of meat, fish and other perishable food articles;

(4) Participation in programmes of human and animal vaccination;

(5) Licensing of eating and entertainment establishments;

(6) Destruction of stray dogs;

(7) Regulation of curing, tanning and dyeing of skins and hides;

(8) Regulation of offensive and dangerous trades,

(xx) Women and Child Development :

(1) Participation in the implementation of women and child welfare programmes;

(2) Promotion of schools, health and nutrition programmes.

(xxi) Social Welfare, including welfare of the handicapped & mentally retarded :

(1) Participation in the implementation of the social welfare programmes, including welfare of the handicapped, mentally retarded and destitute;

(2) Monitoring of the old age and widows pension schemes,

(xxii) Welfare of the Weaker Sections and in particular the Scheduled Castes and Scheduled Tribes :

(1) Promotion of public awareness with regard to welfare of Scheduled Tribes, Schedule Castes and other weaker sections;

(2) Participation in the implementation of the specific programmes for the welfare of the weaker sections."

(xxiii) Public Distribution System :

(1) Promotion of public awareness with regard to the distribution of essential commodities;

(2) Monitoring the public distribution system.

(xxiv) Maintenance of Community Assets :

(1) Maintenance of community assets;

(2) Preservation and maintenance of other community assets.

(xxv) Construction and maintenance of Dharmshalas, Chatrawas and; similar institutions.

(xxvi) Construction & maintenance of cattle sheds, ponds & cart stands.

(xxvii) Construction and maintenance of slaughter houses.

(xxviii) Maintenance of public parks, playgrounds, etc.

(xxix) Regulation of garbage bins in public places.

(xxx) Establishment and control of huts and shades, and

(xxxi) Such other functions as may be entered.

#### 45. Functions and powers of Panchayat Samiti :

(1) Subject to such conditions as may be prescribed by the Government from time to time, the Panchayat Samiti shall undertake the following :

(i) Preparation of the Annual Plans in respect of the schemes entrusted to it by virtue of the Act and those assigned to it by the Government or the Zila Parishad and submission thereof to the Zila Parishad within the prescribed time for integration with the District Plan;

(ii) Consideration and consolidation of the Annual Plans of all Gram Panchayats, in the Samiti and submission of the Consolidated plan to the Zila Parishad;

(iii) Preparation of Annual budget of the Panchayat Samiti and submission of the consolidated plan to the Zila Parishad.

(iv) Performing such functions and executing such works as may be entrusted to it by Government or the Zila Parishad;

(v) Providing relief in natural calamities.

(2) Agricultural (including Agricultural Extension) :

(i) Promotion and development of agricultures and horticulture;

(ii) Maintenance of agricultural seed farms and horticultural nurseries;

(iii) Storing and distribution of insecticides and pesticides;

(iv) Propagation of improved methods of cultivation;

(v) Promotion of cultivation and marketing of vegetables, fruits and flowers;

(vi) Training of farmers and extension activities.

(3) Land Improvement and Soil Conservation--Assisting the Government and Zila Parishad in the implementation of land improvement and soil conservation programmes of the Government.

(4) Minor Irrigation, Water Management & Watershed Development :

(i) Assisting the Government and Zila Parishad in the construction and maintenance of minor irrigation works;

(ii) Implementation of community and individual irrigation works.

(5) Poverty Alleviation Programmes--Planning and Implementation of poverty alleviation programmes and schemes.

(6) Animal Husbandry, Dairy and Polutry :

(i) Maintenance of veterinary and animal husbandry services;

(ii) Improvement of breed of cattle, polutry and other livestock:

(iii) Promotion of dairy farming, polutry and piggery;

(iv) Prevention of epidemics and contagious diseases.

(7) Fisheries--Promotion of fisheries development

(8) Khadi, Village and Cottage Industries :

(i) Promotion of rural cottage industries;

(ii) Organisation of conferences, seminars & training programmes, agricultural and industrial exhibitions.

(9) Rural Housing--Implementation of Housing Schemes & Distribution of house sites in villages outside Gram thana limits.

(10) Drinking Water :

(i) Establishment, repairs and maintenance of rural water supply schemes;

(ii) Prevention and control of water pollution;

(iii) Implementation of rural sanitation schemes.

(11) Social and Farm Forestry, Minor Forest Produce, Fuel & Fodder :

(i) Planting and preservation of the trees on the sides of roads and other public lands under its control;

(ii) Fuel plantation and fodder development;

(iii) Promotion of farm forestry.

(12) Roads, Buildings, Bridges, Ferries, Waterways and other means of communication :

(i) Construction and maintenance of public roads, drains, culverts and other means of communications which are not under the control of any other local authority or the Government;

(ii) Maintenance of any building or other property vested in the Panchayat Samiti;

(iii) Maintenance of boats, ferries and waterways.

(13) Non-Conventional Energy Sources--Promotion & development of non-conventional energy sources.

(14) Education, including Primary and Secondary Schools :

(i) Promotion of Primary and Secondary Education;

(ii) Construction, repair and maintenance of primary school buildings;

(iii) Promotion of social education through youth clubs and Mahila Mandals.

(15) Technical Training and Vocational Education--Promotion of rural artizan and vocational training.

(16) Adult and non-formal education--Implementation of Adult literacy.

(17) Cultural Activities--Promotion of social and cultural activities.

(18) Market and Fairs--Regulation of fairs and festivals.

(19) Health and Family Welfare :

(i) Promotion of health and family welfare programme;

(ii) Promotion of immunisation and vaccination programmes;

(iii) Health and sanitation at fairs and festivals.

(20) Women and Child Development :

(i) Promotion of programme relating to development of women and children;

(ii) Promotion of health and nutrition programmes in the school;

(iii) Promotion of participation of voluntary organisations in women and child development programmes.

(21) Social Welfare, including welfare of the handicapped and Mentally retarded ;

(i) Social Welfare programmes including welfare of handicapped, Mentally retarded and destitutes;

(ii) Monitoring the old age and widow's pensions and pensions for the handicapped.

(22) Welfare of the weaker sections & in particular of the Scheduled Castes and Scheduled Tribes :

(i) Promotion of welfare of Scheduled Castes, Scheduled Tribes and other weaker sections;

(ii) Promoting such castes and classes from social injustice and exploitation.

(23) Maintenance of Community assets :

(i) Maintaining all community assets vested in it or transferred by the Government or any local authority or organisation;

(ii) Preservation and maintenance of other community assets.

(24) Public Distribution System--Distribution of essential commodities.

(25) Rural Electrification--Promotion of rural electrification.

(26) Co-operation--Promotion of Co-operative activities.

(27) Libraries--Promotion of libraries.

(28) Such other functions as may be entrusted,

71. Functions and powers of Zila Parishad.--(1) Subject to such condition as may be prescribed by the Government from time to time the Zila Parishad shall perform following functions :

(1) Agriculture :

(i) Promotion of measures to increase agricultural production and to popularise the use of improved agricultural implements and the adoption of improved agricultural practices;

(ii) Opening and maintenance of agricultural seed farms and commercial farms;

(iii) Establishment and maintenance of godowns;

(iv) Conducting agricultural fairs and exhibitions;

(v) Management of agricultural and horticultural extension of training centres;

(vi) Training of farmers;

(vii) Land Improvement and Soil Conservation.

(2) Irrigation ground water resources and watershed Development :

(i) Construction, renovation and maintenance of minor irrigation works and lift irrigation;

(ii) Providing for timely and equitable distribution and full use of water under irrigation schemes under the control of the Zila Parishad;

(iii) Development of ground water resources;

(iv) Installation of community pump sets;

(v) Watershed development programme.

(3) Horticulture :

(i) Rural parks and gardens;

(ii) Cultivation of fruits and vegetables;

(iii) Farms.

(4) Statistics :

(i) Publication of statistical and other information relating to activities of Panchayat Samiti and Zila Parishad;

(ii) Co-ordination and use of statistics and other information required for the activities of the Panchayat Samiti and Zila Parishad;

(iii) Periodical supervision and evaluation of projects and programmes entrusted to the Panchayat Samiti and Zila Parishad.

(5) Rural Electrification.

(6) Distribution of Essential Commodities.

(7) Soil Conservation :

(i) Soil conservation measures;

(ii) Land reclamation and land development works.

(8) Marketing :

(i) Development of regulated markets and marketing yards;

(ii) Grading and quality control of agriculture products.

(9) Social Forestry :

(i) Organise campaign for tree planting;

(ii) Planting and maintenance of trees.

(10) Animal Husbandry and Dairy :

(i) Establishment of Veterinary Hospitals and Dispensaries;

(ii) Setting up of mobile diagnostic and clinic laboratories;

(iii) Breeding farms for cows pigs;

(iv) Poultry farms, duck farms and goat farms;

(v) Common cold storage facility for dairy, poultry and marine products;

(vi) Fodder development programmes;

(vii) Promotion of dairy farming, poultry and piggery;

(viii) Prevention of epidemics and contagious diseases.

(11) Minor Forest Product, Fuel and Fooder :

(i) Promotion of social and farm forestry, fuel plantation and fodder development;

(ii) Management of minor forest produce of the forests raised in community lands;

(iii) Development of wasteland.

(12) Fisheries :

(i) Fish seed production and distribution;

(ii) Development of pisciculture in private and community tanks;



(iii) Development of inland fisheries;

(iv) Fish curing and drying;

(v) Assistance to traditional fishing;

(vi) Organising fish marketing co-operatives;

(vii) Welfare schemes for the upliftment and development of fisherm PI 1.

(13) Household and small Scale Industries (including food processing) :

(i) Identification of traditional skills in the locality and developing household industries;

(ii) Assessment of raw material requirements so as to ensure its timely supply;

(iii) Design and production to suit the changing consumer demands;

(iv) Organisation of training programmes for craftsmen and artisans;

(v) Liaison to gap bank credit for this programme;

(vi) Popularizing and marketing of finished products;

(vii) Industrial Estates;

(viii) Organising Khadi, Hadloom, Handicraft and Village and Cottage Industries.

(14) Rural Roads and Inland Waterways :

(i) Construction and maintenance of roads other than National and State Highways;

(ii) Bridges and culverts coming under roads other than National and State Highways;

(iii) Construction and maintenance of office buildings of the Zila Parishad.

(iv) Identification of major link roads connecting markets, educational institutions, health centres and link roads,

(v) Organising voluntary surrender of lands for new roads and for widening of existing roads.

(15) Health and Hygiene :

(i) Establishment and maintenance of Hospitals, Primary Health Centres and Dispensaries except Medical College hospitals, T.B. Sanitoriums, Leprosy hospitals and Mental Hospitals;

- (ii) Implementation of immunisation and vaccination programme;
- (iii) Health education activities;
- (iv) Maternity and child health activities;
- (v) Family welfare activities;
- (vi) Organising health camps with Panchayat Samiti and Gram Panchayat;
- (vii) Measures against environment pollution.

(16) Rural Housing :

- (i) Identification of houseless families;
- (ii) Implementation of house building programme in the district:
- (iii) Popularising low cost housing.

(17) Education :

- (i) Promotion of educational activities including the establishment and maintenance of primary and secondary schools;
- (ii) Organisation of programmes for adult education and library facilities;
- (iii) Extension work for propagation of science and technology to;
  - (i) rural areas
- (iv) Survey and evaluation of educational activities;
- (vi) Establishment and maintenance of general hostels, ashrams, schools and orphanages.

(18) Social Welfare and Welfare of Weaker Section

- (i) Extension of educational facilities to the Scheduled Castes. Scheduled Tribes and Backward classes by giving scholarships, stipends, boarding grants and other grants for the purchase of books and other accessories;
- (ii) Managing hostels for the benefit of Scheduled Castes and Scheduled Tribes;
- (iii) Organising nursery schools, balwadis night schools and libraries to eradicate illiteracy and impart general education;

(iv) Conduct of model welfare centres and craft centres to train Scheduled Castes and Scheduled Tribes in cottage and rural industries;

(v) Managing residential basic schools for Scheduled Castes and Scheduled Tribes;

(vi).Providing facilities for marketing of goods produced by members of the Scheduled Castes and the Scheduled Tribes;

(vii) Organising co-operative societies of Scheduled Castes and Scheduled Tribes;

(viii) Other welfare schemes for the upliftment and development of Scheduled Castes and Scheduled Tribes.

(19) Poverty Alleviation Programmes--Planning, Supervision, Monitoring and implementation of poverty alleviation programmes.

(20) Social Reforms Activities :

(i) Women"s organisation and welfare,

(ii) Children"s organisation and welfare;

(iii) Local vagrancy relief;

(iv) Maintenance of social welfare institutions such as orphanages, rescue shelters, etc.:

(v) Sanctioning and distribution of pension for widows, old and physically disabled destitutes and allowances for unemployed and couples of inter-caste marriages in which one party is a member of a Scheduled Caste or a Scheduled Tribe;

(vi) Control of fire outbreaks;

(vii) Campaign against superstition, casteism, untouchability, alcoholism, expensive marriages and social functions, dowry and conspicuous consumption:

(viii) Encouraging communal, marriages and inter-caste marriages;

(ix) Vigilance against economic offences such as smuggling, tax evasion, food adulteration,

(x) Assistance for developing lands assigned to landless labourers;

(xi) Resumption of land alienated by tribals;

(xii) Identify, free and rehabilitate bonded labour;

(xiii) Organise cultural and recreational activities;

(xiv) Encouragement of sports and games and construction of rural stadia;

(xv) Give new form and social content to traditional festivals;

(xvi) Promotion of thrift and saving through :

(a) Promotion of saving habits,

(b) Small savings campaign,

(c) Fight against money lending practices and rural indebtedness.

(21) In addition, the Zila Parishad may :

(a) Management or maintain any work of public utility or any institution vested in it or under its control and management;

(b) Acquire and maintain village hats and markets;

(c) Make grants to Panchayat Samiti or Gram Panchayat;

(d) Adopt measures for the relief of distress;

(e) Co-ordinate and integrate the development plans and schemes prepared by Panchayat Samitis in the district;

(f) Examine and sanction the budget estimates of Panchayat Samitis in the district;

(g) Undertake or execute any scheme extending to more than one block;

(h) Take over the maintenance and control of any Rural bridge, tank, ghat, well channel or drain, belonging to a private; owner or any other authority on such term as may be agreed upon.

(22) All such matters, as enumerated in the Eleventh Schedule of the Constitution of India and which are not mentioned anywhere under this Act.

(23) The Zila Parishad may be vested by the State Government with such powers under any Act as the Government may deem fit.

(24) The Zila Parishad of two or more adjacent districts may jointly undertake and execute any development scheme on such terms and conditions as may be mutually agreed upon.

(25) Preparation of annual budget of the Zila Parishad.

15. Of the subject items which are shown against the Panchayats, Panchayat Samitis or Zila Parishads, the subjects correspond with the entries under Schedule XI (Panchayats) and Schedule XII (Municipalities) of the Constitution.

16. Thus, there is no doubt that the Constitution of India obliges the State to structure the District Planning Committees. There are no options left for the State Government but to provide a District Planning Committee in every district. It is a constitutional obligation that every district of Bihar will have a District Planning Committee.

17. Now one needs to look into Schedule A, of the Rules of 2000, as framed. If Bihar has 37 districts then between Junior Engineers, Assistant Engineers and District Engineers the number cannot remain 50, 26 and 4. The schedule virtually ignores the Constitution of India in any planing by the District Planning Committee in every district. The schedule on the sanctioned strength of engineers (whether Junior Engineers, Assistant Engineers and District Engineers) is reproduced .

**Schedule-Ka**  
**Sanctioned strength**

| District Board |            | Jr.<br>Engineer | Asst.<br>Engineer | Dist.<br>Engineer |
|----------------|------------|-----------------|-------------------|-------------------|
| 1.             | Patna      | 2               | 2                 | 1                 |
| 2.             | Nalanda    | 1               | 1                 | ½                 |
| 3.             | Ara        | 1               | 1                 | ½                 |
| 4.             | Buxar      | 0               | 1                 | ½                 |
| 5.             | Rohtas     | 4               | 1                 | ½                 |
| 6.             | Kaimur     | 1               | 0                 | ½                 |
| 7.             | Gaya       | 5               | ½                 | ½                 |
| 8.             | Aurangabad | 1               | ½                 | ½                 |
| 9.             | Jehanabad  | 1               | 0                 | ½                 |
| 10.            | Nawada     | 2               | ½                 | ½                 |
| 11.            | Bhagalpur  | 2               | 1                 | 1                 |
| 12.            | Banka      | ½               | ½                 | ½                 |
| 13.            | Munger     | 1               | ½                 | 1                 |
| 14.            | Lakhisarai | ½               | ½                 | ½                 |
| 15.            | Jamui      | ½               | 1                 | ½                 |
| 16.            | Sheikhpura | ½               | ½                 | ½                 |
| 17.            | Begusarai  | 2               | 1                 | ½                 |

|     |                                |    |    |   |
|-----|--------------------------------|----|----|---|
| 18. | Khagaria                       | 0  | 0  | ½ |
| 19. | Purnea                         | 0  | ½  | ½ |
| 20. | Katihar                        | 1  | ½  | ½ |
| 21. | Araria                         | 1  | ½  | ½ |
| 22. | Kishanganj                     | ½  | ½  | ½ |
| 23. | Saharsa                        | 1  | ½  | ½ |
| 24. | Madhepura                      | ½  | 1  | ½ |
| 25. | Supaul                         | ½  | ½  | ½ |
| 26. | Darbhanga                      | ½  | 1  | ½ |
| 27. | Samastipur                     | 1  | 3  | ½ |
| 28. | Madhubani                      | ½  | ½  | ½ |
| 29. | Muzaffarpur                    | 3  | 1  | ½ |
| 30. | Vaishali                       | 3  | 2  | ½ |
| 31. | Sitamarhi                      | 3  | ½  | ½ |
| 32. | Sheohar                        | ½  | ½  | ½ |
| 33. | East<br>Champran<br>(Motihari) | 1  | 2  | ½ |
| 34. | West<br>Champaran<br>(Bettiah) | 2  | 2  | ½ |
| 35. | Saran                          | 3  | 2  | 1 |
| 36. | Siwan                          | 5  | 2  | ½ |
| 37. | Gopalganj                      | 3  | 1  | ½ |
|     |                                | 50 | 26 | 4 |

18. For instance if the District Engineers were to be reckoned then except for providing one in Patna, one in Bhagalpur, one in Munger and one in Saharsa as referred to in items 1, 11, 13 and 35, respectively, others districts are without District Engineers. Like wise all the Junior Engineers or the Assistant Engineers have not been placed in all the districts.

19. If this exercise to fill the void was to be taken, three problems will be solved simultaneously. Firstly every district will have a complement of the engineers and secondly the cadre of engineers as part of local self government institutions, call it by whichever name, would have been created to full capacity. Putting both aspects together, consequentially and thirdly, due respect would be given to the Constitution of India for

keeping an army of engineers in the district cadre ready for execution of the plans of the local bodies which represent focal self Government.

20. The State Government, thus needs to enlighten itself to break with the past and concentrate by executing projects as planned projects for the Panchayats and the Municipalities which items are already referred to in XI and XII Schedules of the Constitution of India. There can be no planning without technocrats and persons like engineers to execute them. The Court is not indicating as to what the strength of this district cadre engineers should be. This is also a matter of planning. The State Government will have to work out for itself but cannot avoid placing a full complement of engineers, District Engineers, Assistant Engineers and Junior Engineers in each district. Inevitably, the number is going to be much more than the strength sanctioned and referred to in the Rules of 2000, at present as 50 Junior Engineers, 26 Assistant Engineers and 4 District Engineers. The State Government cannot disrespect the Constitution of India and the reference to District Planning Committees in reference to the items which are referred in XI and XII Schedules of Constitution of India. While the elected representative may form part of the District Planning Committee which numbers which will not be less than 4/5th in the context of municipalities and not less than 2/3rd in the context of Metropolitan Corporations, of the balance positions these are to be considered and filled by the presence of those whose expertise it is as administrators, town planners and environmentalists, educationists and others who contribute to make the habitat civic,

21. The learned Judge whose judgment is assailed has suggested initiating contempt proceedings. This Court would have done so. But, the respondents are disrespecting the Constitution of India, first. Further, the exercise to deal with the void without the complement of the engineers in each district can hardly be avoided or ignored. Completing this exercise will go a long way to help the District Planning Committees, to execute the plans ment to be executed on the subjects mentioned in the Schedules in context. The State Government will have ample opportunity to represent before the Finance Commission of India to say that the Panchayats and Muicipalities, in Bihar, work and execute the plans, provided the administrative infrastructures in keeping with the Constitution is in place. The Court is being informed that an amount of Rs. 108.78 crores has been released in addition to the amount released for 2000-2001 and for the half year 2002-2003 standing on 54.57 crores. It is on record that the amount for the period 1995-96, 1997-98, 1998-99, 1999-2000 was embroided in issues and Bihar has been deprived of funds as it did not establish local self Government in the State. Central Government grants for plans by self Government institutions was contingent upon providing self Government institutions with elected representatives. It will be embarrassing to let the world know that Bihar has no cadre of district engineers to execute the plans for local bodies on items mentioned in the Eleventh and Twelfth Schedule to the Constitution of India. This exercise should be completed two months prior to the close of the financial year on 31 st March, 2003 so that whatever plan allocations

are to be made as a prelude to an exercise in planning, which is a constitutional mandate, is made well in advance and Bihar does not face lapse of funds for lack of infrastructure of institutions which are meant to work in terms of Article 243ZD of the Constitution of India (District Planning Committees).

22. With the aforesaid observation the appeal is decided.

23. There will no order on costs.