

## Sant Kumar Upadhya and Others Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** April 26, 2007

**Acts Referred:** Bihar and Orissa Places of Pilgrimage Act, 1920 " Section 20, 21

**Citation:** (2007) PLJR 45

**Hon'ble Judges:** Barin Ghosh, J

**Bench:** Single Bench

**Advocate:** Narendra Prasad and Akashdeep, for the Appellant; Rajesh Kr. Singh, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Barin Ghosh, J.

The Bihar and Orissa Places of Pilgrimage Act, 1920 prevents accommodation of pilgrims for gain in unlicensed houses

and authorises grant of license to house owners where such pilgrims may be accommodated. Section 20 of the Act directs creation of a fund called

The Lodging House Fund"" which shall comprise of the fees received under the Act and contributions made by the State Government to appoint

any person or a committee to administer the said fund. Section 21 of the Act authorizes the Commissioner to apply the said fund to, amongst

others. the sanitary improvement and conservancy of the area and of any place, building or road which is or may be regulated by the rules made

under the Act. The State Government has constituted a committee to administer such funds pertaining to Rajgir. While constituting such funds, the

State Government has included in the committee many of its officers and also a few private citizens. Although the Commissioner may direct

application of the funds for sanitary improvement and conservancy but having regard to the nature of the things admitted on pleadings in the instant

case, how the funds would be applied for such sanitary improvement and conservancy had although out been and still is being taken by the said

committee. Instead of deciding to allocate such funds to an institution or authority for sanitary improvement and conservancy of Hot Springs and

Maths situate at Rajgir, the committee has decided to engage the petitioners as menial workers to carry out menial work of cleaning and keeping

the Hot Springs and associated Maths free of dirt.

2. The petitioners were originally engaged to do such work for a paltry sum of Rs. 150/- which has since been raised to Rs. 250/-. There is no

dispute that the petitioners have been engaged round the year and are altogether paid monthly emoluments as mentioned above for years.

3. The work for which the petitioners have been engaged is perennial in nature. In the counter affidavit it has been stated that pilgrims flock at

Rajgir only for about four months a year and accordingly the effective work done by the petitioners remains restricted for a period of four months

in a year. This contention, however, is not acceptable principally for the reason that the petitioners are not engaged seasonally; they have been

engaged round the clock 365 days and are paid monthly emoluments. Secondly, the petitioners have been assigned the work of keeping the Hot

Springs clean and bathable. It has not been stated In the counter affidavit that there is any devise by which the flow of Hot Springs is stopped for

eight months. From the Hot Springs, water is flowing for 365 days. To keep such water and place clean and bathable the place is required to be

cleaned every day.

4. Although in the instant case, Contract Labour Abolition & Regulation Act does not apply, for no intermediary contractor has been appointed,

and inasmuch as it is the case of both the parties, i.e., the petitioners and the respondents, that the petitioners have been engaged by the Samiti

which is responsible to keep the place clean and hygienic and merely the Commissioner has allowed the said fund to be applied for that purpose.

To do a perennial work through contractor is not permissible. The work of perennial nature executed by human being cannot be permitted to be

executed at such remuneration which would not even permit the worker to survive. Such an engagement being contrary to the basic human right

and right to live as protected by the Constitution cannot be permitted to be perpetuated by a Samiti constituted by the State Government

comprising of Officers of the State Government. In those circumstances the Samiti made a recommendation to the Commissioner and through him

to the State Government to pay to the petitioners such minimum emoluments which would entail their human dignity but surprisingly neither the

Commissioner nor the State Government has paid any heed thereto. The Commissioner while directing application of a part of such fund knowing

fully well cannot permit exploitation of human beings in course of utilisation of such funds. The State Government knowing fully well that a Samiti is

seeking to exploit human beings cannot permit any of its Officers to be associated with such Samiti. In any event it is unthinkable that the State

Government which is alone competent to constitute the Committee to administer the said fund will permit such Committee to exploit human beings

by denying them even the minimum bare requirement of a human being to survive by rendering work assigned to him.

5. In those circumstances the writ petition is allowed with the following directions:--

1. In the event the said Samiti" still wants to use any human being to keep the said Hot Springs and the adjacent Maths hygienic and clean through

engagement of people, they should ensure payment of minimum wages prescribed by the State Government under the Minimum Wages Act for

sweepers and cleaners and, if nothing to that effect has been prescribed, to the minimum wages prescribed in the said Act pertaining to any

category of its choice.

2. The Commissioner having jurisdiction over Rajgir is directed not to allocate any fund by utilisation where of any person may be asked to

discharge duties of keeping the said Hot Springs and adjacent Maths clean and hygienic at a remuneration less than what has been stated above.

3. The State Government is directed not to constitute a committee or to appoint a person to administer the said funds pertaining to Rajgir which

committee or person may use any human being to keep the said Hot Springs and adjacent Maths clean and hygienic at a remuneration less than

what has been stated above.

4. The petitioners, who have been engaged for keeping the said Hot Springs and Maths clean and hygienic be paid remuneration at the rates

mentioned above on and from today until it is not decided to altogether dispense with the involvement of human beings to be engaged by the

Committee for keeping the said Hot Springs and adjacent Maths clean and hygienic, and

5. Let the remunerations, if any not paid on the basis of the previous understandings as recorded above, be released forthwith but not later than

one months from today.

6. The writ petition is allowed to the extent indicated above. Let a copy of this order be supplied to the learned counsel for the State.