

(2003) 12 PAT CK 0091**Patna High Court****Case No:** C.W.J.C. No. 13646 of 2003

Mahendra Pd. Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 12, 2003**Acts Referred:**

- Constitution of India, 1950 - Article 51A

Hon'ble Judges: Ravi S. Dhavan, C.J; Shashank Kr. Singh, J**Bench:** Division Bench

Advocate: K.H. Subramanian, IAS, Chief Secretary, Bihar, B.K. Haldar, IAS, Secretary Home, Govt. of Bihar, Rajesh Gupta, IAS, Commissioner, Patna Div. Patna, H.C. Sirohi, Commissioner, Magadh Dn. Gaya, S.S. Thakur, IAS, DM, Aurangabad, Brijesh Mehrotra, IAS, DM, Gaya, Sunil Kr. Jha, IPS, SP, Aurangabad, Sanjay Singh, IPS, SP, Gaya, B.S. Meena, IPS, SP. Rohtas, Syed Ehsan Ahmad, IAS, DM, Rohtas, R.S. Paswan, IAS, DM, Kaimur, Jitendra Singh Gangwar, IPS, SP. Kaimur and Shishir Sinha, IAS, Secretary, Road Construction, Mahendra Pd. Gupta in person, for the Appellant; Ashok Kr. Singh, for the Respondent

Judgement

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1. These proceedings are in continuation from yesterday. The public has a right to know why the Court did not give a plan and instead asked the Government officials to get back to their desks and leave the plan with the Registrar General in the evening instead of filing it directly in the Court. Today's newspaper amply display the faithful defense by spokesman of the Government, the State counsel who apparently feels there is no insecurity to life and property in the State of Bihar. Such a defence shows little sensitivity either to the incident of the killing of the engineers Dubey nor to what the vernacular newspapers blast day in and day out about the violence which regularly occurs. Such reassurances cannot dispel the effect. In the mind of the public of daily reports of engineers shot, teachers shot, doctors shot, businessmen shot, women raped, children abducted, the sadism of eye-gouging

and other acts of vigilante justice and so many other incidents of violence.

2. Why defend a situation in which violence abounds, rather than seeking a remedy? Demagogic by a State counsel is not a good reflection on the Government in a matter which has even engaged the attention of His Excellency the President of India the Prime Minister and the nationwide media. The Court cannot resist asking the question : who is instructing whom? Is the State counsel getting his instructions to say all this from the Government? The Chief Minister? And then one wonders where is the Government's chief defender, the Advocate General. An Advocate General who does not come to Court is a strange phenomenon. His position has been borrowed in essence from the British example. A very distinguished British Attorney General wrote in a paper which he submitted, his position is that of a spokesman for the Government, In a paper entitled "The Attorney General : the Corgy of the Crown", in the Cambridge Law Journal 1968, by Sir Ellwyn Jones, Attorney General, later to become the Lord Chancellor. An advance party kept heating the heat in the proceedings of this case, and what was submitted on behalf of the State government were irrelevancies and counterproductive. This is a positive exercise. This case is about life and liberty. Planning is both.

3. This is no joke. One life lost is enough. How many have to be lost for somebody to wake up that all is not well in Bihar, that coercion and intimidation hamper peace and progress in this State? Only those who sit in the safety of their cocoons, whether the Governor, the Chief Minister, the Chief Justice, the Judges, the ministers and those with their own security arrangements, seem to live under a theoretical safety. Let us step outside, into the unprotected world and then the violence can be seen. You do not need a 70 mm screen to see it, it is all around 360 degrees. Let the State counsel and the absentee Advocate General tell the Chief Minister of the fundamental duties enshrined in the Constitution. In this very specific context the Constitution of India says that it shall be the duty of every citizen of India to safeguard public property and abjure violence (Article 51 A) how much more so is the duty of the Government?

4. The Court is not the place to enter into polemics. The Constitution of India talks of peace. Again, for it is never a sin to refer to the Bible on which State polity must work, in the same Article which speaks of fundamental duties, the Court reminds the State Government of its duty to promote harmony, humanism and the spirit of enquiry and reform and, to repeat, to abjure violence and safe guard public property. This in short is the rule of law.

5. It is for this reason the Court thought it fit to send those who may administer the State to get back to their desks at the Secretariat and come up with a plan. A plan of their own, without the hand of the High Court. The High Court is not running the administration. The High Court observed this yesterday and says so today.

6. But a plan must be dedicated. It is not that it cannot be done. It can be executed without favour and for the public good. The High Court cannot help noticing a report in one of the Hindi newspapers, that when the State administration wants to plan, it can do so, better than any State, but this has mostly been seen in the constituency of the Chief Minister. Let the State counsel convey to the Government that the Constitution, in the fundamental duties spelled out, oblige the administrators and those who execute plans to do it for the common good, for this is the Government of the people and for the people. In this regard the Fundamental Duties requires "to strive toward excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement." The State Government may substitute, if the impact of the Constitution is not clear, for the word "nation", the word "Bihar". This would be insular thinking, but as long as the spark of peace, development and planning gets kindled or rekindled, it would benefit the people of the State.

7. The death of an engineer may only be a spark which ignited concern all over the nation, and it may not spark the solution of all ills. Shooting an Archduke in the Balkans may have started the first world war. though it was not the reason for it. Even the President of India has shown concern over this incident, perhaps it may set off a chain reaction.

8. The plan framed in pursuance of yesterday's directions has been placed on record. Let this plan be tested, put into effect and tried. The plan for every machine which has to be mass produced must receive a Bench Mark for quality and efficiency before being replicated, a plan can be no different. And why can't this plan work for the construction of every road in Bihar? If eliminating obstruction to development work can be done in one instance, why may it not be done in others?

9. Let the plan for security of the highway as given today be implemented forthwith from today. Progress in the implementation may be reported when this matter is next taken up in Court on Thursday, i.e. 18th December, 2003. Put up on 18th December, 2003 at 11.30 A.M. in the supplementary list under the same heading.