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THE STATE OF BIHAR AND ORS.

v.

SUBHASH SINGH

FEBRUARY 3, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Court—Order of—Non compliance with—Power to impose costs for—High Court while disposing a writ petition issued directions—Respondent non complied with it—High Court imposed personal cost on respondent—Appeal against order of High Court—Held delay in compliance with court's order was one year and five months—Delay also not explained to court—Held no interference was called for with the order of High Court—The Court before imposing costs personally against the officers should be circumspect and keep at the back of its mind the facts and circumstances in each case.

D

Judicial Review—Judicial review of administrative action is an essential part of rule of law.

Constitutionalism—State—Duty to obey law—All actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law.

E

Constitution of India, 1950 : Articles 53, 74, 75, 154, 163 and 166 :

Bureaucracy—Accountability of—~~The~~ normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review—The head of the Department/designated officer is ultimately responsible and accountable to the Court for result of the action done or decision taken—Factors absolving him of the responsibility should be brought to the notice of Court.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 3337 of 1997.

From the Judgment and Order dated 19.7.96 of the Patna High Court in M.J.C. No. 1488 of 1995.

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H.L. Agarwal and B.B. Singh for the Petitioners.

The following Order of the Court was delivered :

Delay condoned.

This special leave petition arises from the order dated July 19, 1996 imposing costs personally against the respondent passed by the Patna High Court in M.J.C. No. 1488 of 1995.

The Constitution of India is the supreme law of the land, having flown from "We, the people of India, i.e., Bharat, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic Republic". The sovereign power is distributed among the Legislature, the Executive and the Judiciary with checks and balances but not in water tight rigid mould. In our democracy governed by the rule of law, the Judiciary has expressly been entrusted with the power of judicial review as *sentinal in qui vive*. Basically judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to *etat de droit*, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands widely touching the individuals, the more is the scope of judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law. The judicial control on administrative action, thus, affords the courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review. The Constitution has devised permanent bureaucracy as part of the political executive. By operation of Article 53 read with Articles 73 and 74 as well as Article 154 read with Articles 163 and 166, the business of the State is carried on in accordance with the rules of business issued by the President/the Governor, as the case may be, or the rules made for the subordinate officers in that behalf. The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of "full faith and credit" applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in

- A accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken.
- B Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law.
- C

- The constitutional Courts exercise their power of judicial review with constraint to ensure that the authorities on whom the power is entrusted under the rule of law or confided, is discharged truly, objectively, expeditiously for the purpose for which substantive acts/results are intended.
- D The petitioner being a member of the permanent executive, is enjoined to comply with the orders of the Court passed in exercise of the judicial review. On an earlier occasion, while disposing of the writ petition, the High Court has directed the respondent to consider the case of the writ petitioner and to dispose it of with reasoned order within two months.
- E Obviously, the High Court expected that the authorities would discharge their duties expeditiously as enjoined under the rules and as per the directions. Since they did not discharge the duty, necessarily, they were required to give explanation to the Court as to the circumstances in which they could not comply with the direction issued by the Court or if there was any unavoidable delay, they should have sought further time for compliance.
- F Unfortunately, neither of the steps have been taken by the officer in that regard. Therefore, the High Court was constrained to impose the costs personally against him for non-compliance of the order.

- G It is true and we are alive to the fact that when the officer is to take steps as per the decision, some delay may occasion and generally the Courts would be reluctant to impose costs personally against the officers. But the officers are required to go to the Court, give the appropriate explanation and satisfy the Court that they were prevented by circumstances for non-compliance within time specified by the Court. It is equally
- H salutary to note if the High Court feels it necessary to impose costs

personally against the officers, the Court is required to enquire after giving notice and reasonable opportunity to the officer who could not be impleaded earlier or was not on record, to explain the reasons for non-compliance of the order or decision taken to file the proceedings. Take for instance, delay in filing of an appeal or revision. It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused to confer advantage to the opposite litigant; more so when stakes involved are high or persons are well connected/influential or due to obvious considerations. The Courts, therefore, do not adopt strict standard of proof of every day's delay. The imposition of costs on officers for filing appeals causes public injustice and gives the manipulators an opportunity to compound the camouflage. Secondly, the imposition of costs personally against the officers will be counter productive and officers would desist to pursue genuine cases of public benefit or importance or of far reaching effect on public administration or exchequer deflecting course of justice. The Court before imposing costs personally against the officers should be circumspect and keep at the back of its mind the facts and circumstances in each case. Otherwise, public justice will suffer irremediably. Unfortunately, in this case the delay in compliance is of one year and five months and the officer has not explained. The High Court was constrained to impose personal costs against the officer. Under the circumstances, we do not think that it is a fit case for interference.

The special leave petition is accordingly dismissed.

T.N.A.

Petition dismissed.