
(2005) 01 PAT CK 0041
In the Patna High Court
Case No : M.J.C. No. 2154 of 2002

Ali Akbar

APPELLANT

Vs

Sanjay Kumar Rakesh and Others

RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 3

Citation : (2005) 1 BLJR 100 : (2005) 1 PLJR 419

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. Mr. Vijay Prakash, the then Secretary-Cum-IC (Registration) is present and he has filed the additional affidavit dated 4.1.2003. To justify issuance of letter requiring the district Magistrate not to issue the stamp vending licence Mr. Prakash has submitted that looking to the nationwide stamps scam to protect the State Government and to save the generation of stamp revenue such orders were issued by him. He however, has submitted that the orders passed by this Court have already been complied with. In paragraph 13 Mr. Vijay Prakash has relied upon Rule 3 of the Bihar Board's Miscellaneous Rules 1958. The said rules reads as under:

"A higher authority has all the powers of any lower authority and, further may, with or without appeal, modify or reverse any orders passed by lower authority, in a matter primarily within the competence of the lower authority, unless, by any law, the orders of the lower authority are final."

3. It is submitted by Mr. Vijay Prakash that as he has the power of the lower authority he had issued the said circular restraining the District Magistrate from exercising his statutory powers.

4. Rule 3 is in two parts. The first part says that the higher authority has all the powers of the lower authority while the second part says that without any appeal

the higher authority may modify or reverse any orders passed by the lower authority. The second part virtually is power of suo motu revision. This power can be exercised by the higher authority if there is some order passed by the subordinate authority and its correctness, validity, propriety and legality is required to be examined by the higher authority. In the present case, the second part of Rule 3 would not apply because before the IC (Registration) there was no order rather the facts are that he restrained the sub-ordinate authority from passing any order.

5. So far as the first part of Rule 3 is concerned, it clothes the higher authority with the powers of the lower authority which would simply mean that if the lower authority could issue a licence then the higher authority could also issue a licence. In the present case, the order issued by Mr. Vijay Prakash does not say that he would be exercising the powers of the higher authority in issuing the licence, therefore, his order would be final. In fact he issued the directions to the sub-ordinate authority that no licence be issued without the approval of the higher authority. I am again at a loss to understand that how could such a direction be issued by Mr. Vijay Prakash.

6. It goes without saying that in the second part of Rule 3 any order passed by the sub-ordinate authority can be reversed or modified by the higher authority but Rule 3 does not say that before passing a final order lower authority has to seek on approval from the higher authority. If that is accepted, it would be a mockery on the part of the authority and fallacy of law that the lower authority before issuing a licence is required to seek an approval of the higher authority. In a given case, if the higher authority refuses to grant approval then in a revision or on a representation the person appearing before him would have no chance of success because the authority itself had disapproved the proposal and has refused to issue a licence. Reliance on Rule 3 is patently illegal and misconceived.

7. Even otherwise, Rule 3 does not authorise the higher authority including the IC (Registration) to issue a blanket stay/injunction order against the statutory authority from exercising their statutory powers. If the State Government was interested in framing the rules then they could have issued some ordinance right in time clipping the powers of the sub-ordinate authority, but in absence of any statutory provision the higher authority could not have issued such a direction. In fact I really wanted to take action against Mr. Vijay Prakash but as he has tendered an unconditional apology and the orders passed by the Court have already been complied with, I drop the proceedings with a warning to Mr. Vijay Prakash that he should be more careful in future.