
(2005) 08 PAT CK 0094
In the Patna High Court
Case No : C.W.J.C. No. 5834/2005

Bhagirath Prasad and Another

APPELLANT

Vs

Hari Narayan Paswan and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Citation : (2005) 08 PAT CK 0094

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J. and Nagendra Rai, J.—This writ application has been filed by the officers of the Bharat Sanchar Nigam Limited (hereinafter referred to as "BSNL") for quashing the order dated November 10, 2004 passed in CCPA No. 129 of 2002 whereby, the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) while dismissing the aforesaid application has directed the Department of Telecommunication through its Secretary to refer the matter as prayed for in the said case to the BSNL within a period of three months from the date of receipt of the order for necessary compliance of the order passed by the Tribunal in O.A. No. 316 of 2000.

2. The factual matrix show that the respondents No. 2 to 4 filed O.A. No. 316 of 2000 for their regularisation in which BSNL was not a party and some directions were issued for regularisation and when the order was not carried out, they filed the aforesaid CCPA No. 129 of 2002 for proceeding for non-compliance of the earlier direction.

3. The officers of the BSNL who were arrayed as party has raised the sole objection that the BSNL has been created as a Corporation by the Government of India and it has come into existence since October 1, 2000 and it has an independent identity and is a Government owned company as has been incorporated under the Companies Act with a view to take over the business of providing telecommunication service and operation which was being carried out by the Department of Telecommunication. BSNL having separate existence and has not been brought within the purview of Tribunal u/s 14(2) of the

Administrative Tribunal Act, 1985 (hereinafter referred to as the Act), it is not amenable to the jurisdiction of the Tribunal. The Tribunal as appears from the impugned order found substance in the objection and accordingly dismissed the application and discharged the respondents-writ petitioners but issued the aforesaid direction to the Secretary of the Department of Telecommunication to get the order complied by the BSNL.

4. Learned Counsel appearing for the petitioners raised the sole point that as the BSNL has not been notified as an authority by the Government to which the provisions of the Act will apply by issuance of the notification u/s 14(2) of the Act. The Tribunal has no power to issue any direction and when the Tribunal has no power to issue a direction to the BSNL which fact has been accepted by the Tribunal, it cannot in indirect way issue a direction to the BSNL through the agency of the Central Government.

5. Learned Counsel appearing for the private respondents submitted that the writ application is not maintainable and as the matter arises out of contempt proceeding the appeal is maintainable u/s 19 of the Contempt of Courts Act, 1971. He further submitted that as the BSNL has not been made a party, the writ application at the instance of the officers of BSNL is not maintainable. He also submitted that the -Tribunal is not a necessary party and its name is deleted from the array of (sic) respondents, only private parties will be the respondents and in that view of the matter, the writ will not be maintainable against the private parties.

6. The Act has been enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons as mentioned in the Act. Section 14 of the Act contains a provision with regard to jurisdiction, powers and authority of Tribunals and Sub-section (2) of Section 14 empowers the Central Government to make the provisions of Sub-section (3) of Section 14 applicable to the other authorities with regard to matters enumerated therein.

7. Thus, under the provisions of the Act, if the local or any other authority is to be included as an authority for the purpose of applicability of the power of Tribunal to deal with the service matters the notification is required to be issued by the Central Government. The BSNL is a company registered under the Companies Act and it has its own existence. Though, it is a Government Company but it is not a department of the Government and as such the Act is not applicable in the case of BSNL. The notification u/s 14(2) of the Act is a must for bringing it within the purview of the Tribunal for adjudication of matters as enumerated in Sub-section (3) of Section 14 of the Act. It is an admitted fact that up-till-npw, no notification has been issued u/s 14(2) of the Act and accordingly, the Tribunal has no jurisdiction to entertain any dispute with regard to service matters of the BSNL.

8. The first submission raised on behalf of the learned Counsel appearing for the

private respondents regarding maintainability of the writ application on the ground of availability of remedy of appeal is concerned, that point deserves rejection for the simple reason that the Tribunal itself has held that the application was not maintainable and it has not passed any order. The appeal u/s 19(1) of the Contempt of Courts Act, 1971 lies only in a case when the contemner is punished for Contempt of Court. As in this case no punishment has been awarded, the appeal is not maintainable. [See D.N. Taneja Vs. Bhajan Lal,

9. The second submission raised on behalf of the learned Counsel appearing for the private respondents that the writ application has not been filed by the BSNL also fails on the ground that the private respondents had made the petitioners only as a party before the Tribunal and as such they are competent to challenge the order. If the said submission is accepted in that case, the application filed before the Tribunal by the private respondents itself would be defective and not maintainable.

10. The last submission advanced on behalf of the private respondents that if the Tribunal is deleted from the category of respondents, only private respondents will remain and accordingly, the writ is not maintainable against a private party is devoid of substance. The law is well settled that a writ of certiorari can be issued in the case also when the dispute is between the private parties. The writ of certiorari is issued against the act, order or proceedings of the judicial or quasi judicial body. The same can be issued even if the dispute is between the two private parties. In this connection, reference may be made to the recent judgment of the Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others,

11. Coming to the submission raised on behalf of the petitioners that as the BSNL was not amenable to the jurisdiction of the Tribunal, the Tribunal having realised this fact cannot do a thing indirectly. The settled proposition of law is when the authority has no power to do directly, he cannot do indirectly.

12. Accordingly, the direction issued by the Tribunal to the Secretary of the Department of Telecommunication for issuance of the direction to the BSNL to carry out the earlier order of the Tribunal is set aside.

13. In the result, the writ application is allowed, but in the facts and circumstances of the case, there shall be no order as to the costs.