(2007) 04 PAT CK 0017

In the Patna High Court

Case No : CWJC No. 4534 of 2006

B.N.P. Sinha — APPELLANT

Vs

The Union of India and Others — RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) PLJR 388

Hon'ble Judges : J.N. Bhatt, C.J;B.K.Sinha, J

Bench : Division Bench

Advocate : Ray Shivaji Nath and Ray Saurabh Nath, for the Appellant; Ravi Ranjan for the Union of India and Mr. S.K. Sharan for Respondents No. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

Dr. J.N. Bhatt, C.J.—By this writ petition under Article 226 of the Constitution of India, the petitioner has sought direction against the respondent-authorities for quashing the order of the Central Administrative Tribunal, Patna Bench, Patna, dated 30.8.2005, passed in O.A. No.464 of 1997 and the order of punishment like that of reduction to lower grade in service awarded to him by the Commissioner of Income Tax, Patna. Before we consider the merits of the matter at the admission stage, we would like to highlight and place on record the fundamental principles and relevant proposition of law for the purpose of entertainment of a writ petition under Article 226 of the Constitution of India.

2. Article 226 of the Constitution of India is designed and devised to redress the grievance meted out in case of any violation of law, fundamental rights or any recognizable injury sustained. The jurisdiction of the Writ Court is plenary, extraordinary, discretionary and equitable. It cannot be allowed to be exercised as an appellate forum. The scope of Article 226 in a case like one on hand, where departmental proceedings are questioned, becomes very narrower.

3. Judicial review, which is the cornerstone of Article 226 of the Constitution of India, is designed to advance the cause of justice and not to refard it. A perpetrator of law cannot be protected with the help of shield of constitutional writ jurisdiction. If the rights of a person are violated and if it is found so to the satisfaction of the Court, then such rights can be protected. As a matter of fact, Article 226 of the Constitution of India is a vital weapon in the armoury of the administration of law and justice. Judicial review is the basis of rule of law, which is the basic test of democratic set-up. Judicial review, as such, has historical past but we need not deem it necessary to, meticulously, go in detail in this writ petition. Nevertheless, it must be stated that whosoever tries to misuse or abuse the constitutional right with tainted hand and intrusive approach, the Court is left with no option but to put evenly an appropriate legal seal.

4. The petitioner has questioned the legality and validity of the order of the Central Administrative Tribunal and the order of punishment in the nature of reduction to lower grade from Income Tax Officer to the Income Tax Inspector in the Income Tax Department.

5. Following chronological date-wise events/ material facts, as mentioned by the petitioner, may be highlighted at this juncture:

Date

Facts

21.2.1986

Petitioner was subjected to CBI search and an FIR was. filed against the petitioner in the Court of Special Judge, CBI, Patna.

2.11.1987

After the investigation and on receipt of final form, the criminal case was dropped by the Special Judge, CBI, Patna for want of sufficient evidence.

23.5.1988

The Commissioner of In come Tax, Patna, issued a memorandum of charge sheet on alleged disproportionate asset worth Rs. 84,237/-.

6.6.1988

In reply to the notice to the memorandum of charge-sheet, the petitioner pleaded not guilty.

10.10.1988

Presenting Officer requested the inquiry officer to add nine more witnesses to the list of three witnesses and the same was allowed by the inquiry officer.

16.7.1990

Pre-recorded statements of only three witnesses to the charge sheet were supplied to the petitioner, but prerecorded statements of nine additional witnesses were not supplied to the petitioner.

28.12.1988, 9.6.1989 & 26.7.1989

The petitioner requested for supply of copies of 23 documents and the same was allowed, but subse- quently disallowed. How ever, inspection of rest 22 documents was only allowed.

1.8.1989

The petitioner filed a petition before the inquiry officer for supply of such additional documents, but it was not considered.

26.3.1990 & 30.5.1990

Presenting Officer was directed by the enquiry officer to furnish non-avail ability certificate in respect of 12 additional documents. When this was not done, the petitioner made a repre- sentation before the enquiry officer.

1.2.1991 & 7.2.1991

The petitioner requested the enquiry officer to arrange for furnishing of details of income, expenditure and assets and also addition of further defence documents and witnesses. The same was not allowed by the in- quiry officer.

19.6.1991 & 20.6.1991

Five State witnesses were examined as SW 1 to SW 5 wherein 4 SWs named in the application for additional 9 witnesses were examined as SW 2 to 5,

25.6.1991 & 3.9.1985

The petitioner made a representation before the Commissioner of Income Tax, Disciplinary Authority, Patna and a letter was en closed which showed that the department was intimated about the properties acquired by his wife.

2.8.1991

Inquiry report of the Inquiry Officer was sent to the petitioner.

18.10.1991, 16.9.1992 & 28.4.1994

The petitioner made a representation to the disciplinary authority that the finding of the Inquiry Officer was not correct. The petitioner also made a representation to the Chairman, Central Board of Direct Taxes, New Delhi.

19.10.1992

Respondent while forwarding a copy of the inquiry report to the petitioner for his comment did not forward any recommendation in the matter of proposed punishment even, though the petitioner requested for the same.

24.10.1994

Disciplinary authority finalised the proceeding by imposing the unwarranted penalty of reduction to lower post/grade/service of Inspector of Income Tax for unspecified period.

4.1.1995 & 16.12.1994

The review petition of the petitioner was decided and an appeal was filed before the President of India.

22.5.1996

The Central Administrative Tribunal, Patna in O.A. No.284 of 1996 gave a direction to decide the appeal within two months from the date of order.

11.11.1996 & 23.9.1996

The Government of India, Ministry of Finance passed belated order and communicated to the applicant vide income tax Officer, Inquiries (Admn.), Patna confirming the order of punishment of reduction of rank.

30.8.2005

The petitioner filed O.A. No. 464 of 1997 before the Central Administrative Tribunal. The said application was admitted and after hearing the same was dismissed.

6. We have heard learned counsels appearing for the parties. We have also given our anxious thought and considered the relevant propositions of law and the jurisdictional sweep of all these over the decision reached by the disciplinary authority and after having been decided by the Tribunal.

7. There is no dispute about the fact that the writ petitioner was subjected to C.B.I. search and an F.I.R. was filed against him in the court of Special Judge, C.B.I. Patna on 21.2.1986. Somehow or the other, on 2.11.1987, after the investigation and on receipt of final form, the criminal case was dropped by the Special Judge, C.B.I., Patna for want of sufficient material. Subsequently, on 23.5.1988, the Commissioner of Income Tax issued a memorandum of charge sheet, on disproportionate asset worth Rs.84,237/-, a copy whereof is contained in Annexure I of Annexure 3 to the writ application.

8. According to the article of charges, the petitioner, while functioning as Income Tax Officer at different places like Hazaribagh, Muzaffarpur and Patna during the period March, 1970 to October 1985, was subjected to C.B.I. search and he was found to have disproportionate assets to the known means of the petitioner. This misconduct is punishable under rule 3(1)(i) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

9. There was another article of charges against him that while he was functioning as Income Tax Officer at different places mentioned in the first article of Charge,

he neither obtained prior permission, nor intimated about depositing of Rs.60,000/- in the Housing Co-operative Society. He also did not obtain permission for or did not give intimation for the purchase of NSC worth Rs.40,000/-, C.T.V. worth Rs. 10,500/- and camera worth Rs.2,500/- and, thereby, such conduct, if proved, is punishable under the provisions of rule 18(2) and rule 18(3) of the Central Civil Services (Conduct) Rules, 1964.

10. An enquiry officer was appointed to enquire into the misconduct and disproportionate asset or possessing asset disproportionate to known means of income, as well as, for the articles of charges, as stated above, and the enquiry officer found him guilty. The disciplinary authority accepted the enquiry report and passed the order of punishment reducing him in lower rank in service as Income Tax Inspector from the post or cadre of Income Tax Officer in the State of Bihar. After the order of punishment was imposed by the disciplinary authority, the petitioner has challenged the same before the appellate authority unsuccessfully. The aforesaid two orders of the disciplinary authority, as well as, the appellate authority came to be challenged before the Central Administrative Tribunal by filing O.A. No.464 of 1997, which was decided on 30th August, 2005, whereby the Tribunal dismissed the original application, while confirming the impugned order of the disciplinary authority and that is why this petition is filed under Article 226 of the Constitution of India.

11. We have given our anxious thought and considerations not only to the factual profile but also the text, content, texture and colour of the impugned order of the Tribunal and we find no any flaw or fault. On the contrary, we feel that in such a case where a punishment is called for, which has been given, whether it is on liberal side or generous side, since the Income Tax Department has not questioned, we do not probe into that.

12. In our opinion, this writ petition is absolutely meritless and deserves to be dismissed with a cost of Rs.5,000/-(Five thousand) at the admission stage after hearing both the parties taking it for final hearing on consensus. In the net result, the writ petition shall stand dismissed with a cost of Rs.5,000/- (Five thousand).