

(2016) 07 MP CK 0013
In the Madhya Pradesh High Court
Case No : W.P. No. 5252 of 2013

Dr. Ram Niwas Sharma

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 3 MPLJ 530

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Ankur Shrivastava, Advocate, for the Petitioner; Smt. D.K. Bohre, Government Advocate, for the Respondents/State; Smt. Sudha Gautam, Advocate, for the Respondent No. 5

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioner has prayed for setting aside the order dated 22.01.2013 (Annexure-P/11), whereby a recovery of Rs. 19,200/- is inflicted on the petitioner.

2. Shri Ankur Shrivastava, learned counsel for the petitioner submits that a show-cause notice was issued against the respondent No.5 to inquire about alleged irregularity in distribution of bicycles. In the said inquiry, the petitioner was never permitted to participate. The petitioner was served with a notice dated 03.01.2013 (Annexure-P/8), wherein it is directed that petitioner should give his explanation on the same date. Shri Shrivastava submits that in view of nature of allegations/explanation sought for, it was not practically possible to give detailed reply on the same date. The petitioner promptly filed his reply Annexure-P/9 on 15.01.2013. The impugned order is passed much after receiving the petitioner's reply on 22.01.2013 (Annexure-P/11). It is submitted that petitioner's reply has not been considered. The petitioner was not given reasonable time to file his reply. The principles of natural justice are violated in decision making process.

3. The prayer is opposed by Smt. Bohre, learned Govt. Advocate. By placing reliance on the return and the order dated 08.01.2013, it is submitted that opportunity to file reply was given to the petitioner. Since reply was not filed within aforesaid time, no fault can be found in the order impugned.

4. Smt. Gautam, learned counsel for the respondent No.5 supported the impugned order and borrowed the same arguments which were advanced by the Government Advocate.

5. No other point is pressed by the learned counsel for the parties.

6. The show-cause notice dated 03.01.2013 (Annexure-P/8) makes it clear that an inquiry was going on against Shri Maithilisharan Mishra (Ex-Principal). In the said inquiry, certain information were desired from the petitioner. The show-cause notice does not give any impression or information to the petitioner that allegations are against him and this notice may ultimately result into imposition of punishment/recovery. In general, the ingredients of principles of natural justice are that

(i) the person whose rights are to be affected must be given notice of the case or the charges which he is to meet,

(ii) he must be given an effective opportunity to make representation and to explain the allegations made against him and to have his say in the matter and,

(iii) the authority conducting the proceedings must not be biased and should act in good faith.

In the present case, it is not made clear to the petitioner that the show-cause notice is directed against him and his rights may be affected pursuant to this show-cause notice.

Thus, the aforesaid show-cause notice cannot be a reason for inflicting recovery against the petitioner.

7. In the show-cause notice dated 03.01.2013, it is directed that the petitioner must furnish his reply on the same day. The allegations in the show-cause notice show that for giving an effective reply, perusal of record etc. is necessary. The allegations are as under:

1- D;k vkus iwoZ izHkkjh izkpk;Z Jh feJk th ls fnukad 10-10-2009 dks izHkkj xzg.k dj fy;k Fkka vxj ugha rks dc fd;k Fkka izek.k izLrqr djsaA

2- vkus rRdkGhu tkWap vf/kdkjh ds le{k vius i= dz0@182@2011 fnukad 12-05-2011 ds fcUnq dz0 7 esa vk/kkj ij ;g ys[k fn;k gS fd 2009&10 esa Hkh iwoZ izHkkjh izkpk;Z Jh eSfFkGh"jk.k feJk us vkB Nk=koklh Nk=kvksa dks lkbZfdy forfjr dh Fkh tcfv vkids }kjk laGxz Nk=kvksa ds fcG esa fnukad vafdr ugha gSA

3- D;k ;g IR; ugha gS fd Jh feJk us lkbZfdy forj.k iath ds vuqlkj dz0 01 ls 72 rd mYysf[kr Nk=kvksa dks lkbZfdy forj.k dj QeZ dks jkF"k dk Hkqxrku fd;k gSA

ftlesa vkids }kjk izLrqr lwph ds vuqlkj dksbZ Hkh Nk=koklh Nk=k dk uke mDr 72 Nk=kvkksa esa ugha gSA

4- D;k vkids }kjk izLrqr lwph dh Nk=koklh Nk=kvkksa dh pSd dz0 839931 ls pSd dz0 839932] 33] 34] 36 ,oa 38 tkjh dj QeZ dks jkf"k dk Hkqxrku fd;k gSA ;fn ugha rks izek.k izLrqr djsaA

5- D;k lkbZfdy forj.k iath esa lkbZfdG dk psfll uacj ds uhps fnukad vki }kjk vafdr dh xbZ gSA vxj vki }kjk vafdr dh xbZ rks fnukad vafdr djus dk D;k vkSfpR; Fkka

6- D;k Lohd`r lwph vuqlkj lkbZfdG forj.k ,oa jkf"k Hkqxrku ds le; ik=@vik=Nk=kvkksa dk voGksdu djuk U;k;laxr ugha gSA ;fn gkWa rks vki }kjk vik=Nk=koklh dks forfjr lkbZfdG dh jkf"k 19200-00 (mUuhl gtkj nks lkS :i;s) dk Hkqxrku QeZ dks D;ksa fd;k x;kA

8. A plain reading of the aforesaid allegations makes it clear that without perusing the record and relevant register, cheque book etc. effective reply cannot be given. In addition to the said informations, the proof was also desired from the petitioner. Thus I find force in the argument of petitioner that in view of the nature of allegations levelled against the petitioner, the respondents should have given reasonable time to the petitioner to file effective response. The petitioner was not given even one full day's time and was directed to file reply on the same day.

9. In the opinion of this Court, the petitioner was not given sufficient time to enable him to prepare his case. His right to file an effective reply to the show-cause was denied. In AIR 1936 PC 269 (CIT v. Bombay Trust Corporation), AIR 1961 Calcutta 626 (Sudhir Ranjan v. State of West Bengal), AIR 1992 Karnataka 79 (K. Satyasankara Shetty v. Mangalore University), it was held that department must give sufficient time to enable the individual to prepare his case. In Bua Dass v. State of Punjab, AIR 1965 Punjab 342, one day's time given to the show-cause against the proposed action was held to be improper and invalid. It was further held that calling upon a delinquent employee to show-cause immediately and permit him no time to consider the material amounts to denial of notice. In 2003 (4) SCC 557 (Canara Bank and others v. Debasis Das and others), the Apex Court held that time given for the purpose of filing reply should be adequate so as to enable the person to make his representation. In absence of notice of that kind and such reasonable opportunity, the order passed becomes wholly vitiated (Para 15).

10. Thus, in my view, the principles of natural justice were grossly violated by not giving adequate time to the petitioner to file response. The petitioner indeed filed response on 15.01.2013, but the same was also not considered while inflicting the recovery vide order dated 22.01.2013.

11. Consequently, for these cumulative reasons, the impugned recovery order cannot be permitted to stand and the same is hereby quashed. Liberty is given to the respondents to proceed against the petitioner by following the principles of

natural justice.

12. The petition is allowed to the extent indicated above. No cost.