
(2001) 03 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 2941 of 2001

Kamta Prasad Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2001) 2 BLJR 1189

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The three petitioners hold the substantive posts of Sub-Inspector in the Department of Police but at the material time, they were on deputation in the Transport Department working as Enforcement Sub-Inspectors. By order dated 6-1-2001 issued by the Transport Commissioner, the three petitioners have been put under suspension w.e.f. 31-10-2000, the date on which they were taken into custody in connection with a police case in which they were accused of offences punishable under Sections 7/13(ii) of the Prevention of Corruption Act. By that order, their services have also been handed back to their parent department, namely, the Home (Police) Department, Bihar. This writ petition has been filed challenging the order in-so-far as it puts the petitioners under suspension.

2. The three petitioners are accused in Lalpur P.S. Case No. 122/2000 instituted inter alia under Sections 7/13(ii) of the Prevention of Corruption Act. According to the prosecution case on 30-10-2000 some persons, in police uniform, seized the documents of a truck bearing registration No. AP-26D/0969 and demanded Rs. 10,000/- from the driver of the truck, a certain Pradeep Ram for the returns of the documents. As he was not in a position to pay the demanded amount, he was asked to come with the money to Apsara Hotel, Ranchi. When the driver went to the hotel he was in a position only to offer a sum of Rs. 1,000/- but the

culprits refused to return the seized documents for a sum less than Rs. 10,000/- demanded by them. At this stage, the driver went to the Senior Superintendent of Police, Ranchi and submitted before him a written complaint. On the basis of the complaint submitted by the driver Lalpur P.S. Case No. 122/2000 was instituted inter alia under Sections 7/13(ii) of the Prevention of Corruption Act and it was assigned to one Aashish Batra, A.S.P. Ranchi. On 31-10-2000, a team of officials conducted a raid at Hotel Apsara where in room No. 43 the raiding team found the three petitioners along with one Shailendra Kumar, described as the Munshi of petitioner No. 3. On search, marked currency notes amounting to Rs. 5,000/- were recovered from the pocket of petitioner No. 1. The documents of the truck in question and a sum of Rs. 80,550/- was also recovered from that room. Cash amounting to Rs. 69,050/- was recovered from room No. 45, a sum of Rs. 1,15,954/- in cash was recovered from room No. 49 occupied by petitioner No. 2 and from room No. 52, occupied by petitioner No. 3 were recovered cash amounting to Rs. 1,54,360/- along with the receipt books, seizure books and seized documents of a number of vehicles. All the accused (including the three petitioners) were arrested and forwarded to judicial custody. They were later released on bail.

3. This is the background in which the impugned order was issued putting the three petitioners under suspension and sending them back to their parent department. In these facts and circumstances, it would appear that the petitioners are perhaps not the most suitable and desirable persons who may invoke in their favour the extraordinary prerogative writ jurisdiction of this Court.

4. But, Mr. Basudeo Prasad, learned Sr. Counsel appearing on their behalf insists that the impugned order is illegal and liable to be set aside. He assails the impugned order on two grounds; one is that the Transport Commissioner had no authority or competence to put the petitioners under suspension because the petitioners were working in the Transport Department on deputation and any disciplinary measure against them could only be taken by the competent authority in their parent department which was the Home (Police) Department. The other ground on which Mr. Prasad assailed the order is that it purported to put the petitioners under suspension retrospectively from 31-10-2000.

5. I am unable to agree with Mr. Prasad and in my view, his submissions overlook certain statutory provisions. To me, it is clear that the legal effect of the order, dated 6-1-2001 passed by the Transport Commissioner is only in-so-far as it reverts the petitioners back to their parent department and in-so-far as the petitioners are declared to be under suspension, that is not by virtue of that order but by operation of law.

6. At this stage, it will be useful to take note of Rule 49-A of the Bihar Civil Services (Classification, Control and Appeal) Rules, Rule 49-A(2) in-so-far as relevant for this case is as follows:

49-A(2)- A Government servant shall be deemed to have been placed under

suspension by an order of appointing authority-

(a) with effect from the date on his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.

(b) xx xx xx

Explanation-xx xx xx

7. From a plain reading of the Rule, it is clear that as soon as the detention extends beyond the period of forty eight hours, the government employee in detention would find himself under suspension even though no formal order might be issued by the appointing authority. This would be by operation of law and by virtue of the deeming provision as contained in Sub-rule (2) of Rule 49-A.

8. Mr. Prasad sought to wriggle out of the aforesaid provisions by submitting that Rule 49-A(2) will not have any effect after the petitioners were released on bail and after their release they could only been put under suspension prospectively and by an order issued by the competent authority. This submission by Mr. Prasad, too is unacceptable and the answer to the submission is provided in Sub-rule 5(a) of Rule 49-A which is as follows:

5(a) An order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

9. It is, therefore, to be seen that where as under Sub-rule 2 of the Rule 49-A" a government employee in detention is placed under suspension, by operation of law, even without the issuance of a formal order of suspension by the appointing authority, by virtue of Sub-rule 5(a) the suspension having come into operation can only be revoked or modified by a formal order issued in that regard by the competent authority.

10. Mr. Prasad submitted that Sub-rule (5) of Rule 49-A was only an enabling provision, empowering the competent authority to revoke the suspension even before the employee was released from detention and the suspension by virtue of Sub-rule 2 must come to an end automatically on the release of the employee concerned from detention.

11. I am unable to accept the submission as it appears to me to be contrary to the plain language of Sub-rule 5(a).

12. Mr. Prasad, further, submitted that the provisions of Rule 49-A of the Bihar Civil Services (Classification, Control and Appeal) Rules must be read along with Rules 99 and 100 of the Bihar Service Code which apply to all the Government servants. I am unable to accept this submission either and to me it is plain that Rule 49-A operates independently and the clear mandate of this rule cannot be disregarded with reference to any other provisions of the Bihar Service Code.

13. Mr. Prasad also relied upon some decisions in support of his submission that the suspension resulting from detention will come to an end once the employee concerned was released from detention. These decisions are reported in 1978 BBCJ 208; 1983 BLJR 563 and 1987 PLJR 1042 but all these decisions are on Rules 99 and 100 of the Bihar Service Code and in none of these decisions, Rule 49-A of the Bihar Civil Services (Classification, Control and Appeal) Rules finds any reference.

14. Mr. Prasad also relied upon an unreported decision by a learned single Judge of this Court in 1989 C.W.J.C. 6045 of a copy whereof is at Annexure-5 to the writ petition. In that decision, though Rule 49-A was referred to, the learned Judge did not allow the respondents to rely upon the provisions of Rule 49-A on the ground that in the counter-affidavit filed in that case no reference was made to Rule 49-A and the suspension order was sought to be justified under Rules 99 and 100 of the Bihar Service Code. The relevant passage is to be found in paragraph 9 of that decision which is as follows:

Admittedly, no separate order under Rule 100 has been passed so far as the petitioner is concerned. The counter-affidavit filed by the respondents is absolutely silent in regard to Rule 49-A. Paragraph 6 of the counter-affidavit states that the suspension was under Rules 99 and 100 of the Code. It does not at all talk of Rule 49-A. In the said view of the matter, it is difficult to permit the learned SC III to shift his stand Annexure-1 fails to disclose as to whether there was any departmental proceeding under contemplation. Even in the counter-affidavit, it has not been stated that on the day on which the order of suspension was made, any department proceeding was contemplated.

15. I am of the view that a provision of law has not need to be referred to in the counter-affidavit which only contains the pleadings of the party. That apart, that is not the position in this case and hence, I am fully satisfied that none of the decisions relied upon by Mr. Prasad is of any avail to the petitioners in this case.

16. In the light of the discussions made above, I come to the conclusion that the three petitioners would be deemed to have been placed under suspension by virtue of Sub-rule (2) and would remain in that State till such time as their suspension is revoked or modified by the competent authority as provided under Sub-rule (5) of Rule 49-A of the Bihar Civil Services (Classification, Control and Appeal) Rules and the impugned order passed by the Transport Commissioner simply reverts them back to their parents department to which of course no exception can be taken.

17. In the result, I find no merit in this writ petition. It is accordingly dismissed.