
(2011) 07 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2685 of 2011

Konda Prabhakar Rao

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Bihar Societies Registration Rules, 1965 — Rule 12, 13

Citation : (2011) 07 JH CK 0011

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Learned Counsel for the Petitioner seeks leave to delete the name of Respondent Nos. 4, 6 and 8.

2. Permission, as prayed for, is granted.

3. Amendment shall be carried out in the writ petition by red ink, during course of the day.

4. Learned Counsel for the Petitioner submitted that the Petitioner is the Secretary of Jharkhand Badminton Association registered under the Societies Registration Act, 1860. It is submitted by Learned Counsel for the Petitioner that absolutely a vague notice dated 13th January, 2011 was issued by the Respondents, which is at Annexure 2 to the memo of the petition. Nothing has been stated in the show cause notice that what was the irregularity. It may be about the building construction or may be about membership of the Jharkhand Badminton Association or may be about financial irregularity or for such other matter. Nothing has been stated in the show cause notice, worth the name. What reply they have expected from the Petitioner was absolutely unknown to the Petitioner. The show cause notice reflects absolutely non application of mind and, hence, the Petitioner had approached the Respondents on 2nd February, 2011 and had pointed out that if the Respondents had received any complaint, a copy thereof should be given to the Petitioner or reasons for show cause notice may

be given. Similarly, if there are allegations levelled against the Petitioner by the Respondent authorities, the charges relating to such allegations should have been given in writing, one by one, to the Petitioner. As nothing was stated in the show cause notice, there was no question of giving any reply, whatsoever arises, of the said vague show cause notice and abruptly after 2nd February, 2011 without any proper show cause notice and without any hearing, the order dated 15th June, 2011 has been passed in which several allegations have been levelled against the Petitioner, which are devoid of any merits. The impugned order is at Annexure A to the counter affidavit. When the Petitioner applied for certified copy, deliberately the Respondents are not giving certified copy of the same and, therefore, it is submitted by Learned Counsel for the Petitioner that the impugned order deserves to be quashed and set aside and if at all the Respondents want to take any action, they may issue a fresh show cause notice, in detail, so that all the allegations, levelled against the Petitioner, may be replied, in detail, by the Petitioner. Assuming without admitting that notice was given in much detail then also there is no substance in the allegation levelled against the Petitioner because the election which was held by the Petitioner-Association in presence of the Observer, who was present from the Badminton Association of India. All these details have been pointed out by the Petitioner to the concerned Respondent authorities. The order has been passed by the Inspector General of Registration. Such a simple mechanism of issuance of notice and hearing was not known to the high ranking administrative officer of the State i.e. Inspector General of Registration and, therefore, let the impugned order be quashed and set aside as there is grossest violation of principle of natural justice.

5. Learned Counsels for the Respondents submitted that though the show cause notice is vague, now the Petitioner has participated in the hearing and, therefore, that ground is not available to the Petitioner. Moreover, the impugned order dated 15th June, 2011 has been passed, in detail, in which, several irregularities in the election have been pointed out viz. the election was not in consonance with the provisions of Society Registration Rules, 1965 and, hence, the petition deserves to be dismissed. Learned Counsel for the Respondents further submitted that once the Petitioner was participating in the hearing, no question of vagueness in show cause notice, whatsoever, arises. There is no pleading that the copy of the allegation was never given to the Petitioner and moreover, there is no substance in the petition, on merits and, hence, the impugned order is true and corrects.

6. Having heard Learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by Respondent No. 2 dated 15th June, 2011, which is at Annexure A to the counter affidavit mainly on the following facts and reasons:

(i) It appears that the Petitioner was given show cause notice upon somebody's complaint, who is one of the Respondents herein. The complaint was made by the private Respondents, but, a copy whereof was never given to the Petitioner

i.e. Jharkhand Badminton Association. Moreover, on the basis of the so called complaint, show cause notice was issued by Respondent No. 3 dated 13th January, 2011, which is at Annexure 2 to the memo of the petition. Looking to Annexure 2, it appears that it has been stated in the show cause notice that some complaint has been received, which is recorded as Miscellaneous Case No. _ of 2010 and for these complaints, hearing has been fixed on 2nd February, 2011 at 03:30 PM. and the parties are directed to present themselves with necessary reply.

Looking to this show cause notice given to the Petitioner, it appears that no allegation is levelled against the Petitioner for anything, whether the show cause notice is about the building construction or for membership of the Jharkhand Building Association or for some financial irregularity or for anything else. Absolutely, vague show cause notice was given by Respondent No. 3 to the Petitioner and hearing was fixed on 2nd February, 2011.

(ii) The Respondents have lost sight of the fact that there cannot be a hearing on any date because nothing was mentioned in the show cause notice, at all. Such vague, imprecise and unspecific notice is not supposed to be replied by the Petitioner, at all. Adequate opportunity ought to have been given to the Petitioner to represent his case. The Petitioner cannot presume allegation against himself. The allegations, if at all, are to be levelled against the Petitioner, ought to be mentioned in the show cause notice. Thus, there is gross violation of principle of natural justice since adequate opportunity was never given to the Petitioner to meet with the allegation. The Petitioner cannot be kept in dark about the allegations levelled against him.

(iii) On 2nd February, 2011, the Petitioner was present before Respondent No. 2. The Respondents had demanded the documents and wanted to see the documents whereby, the allegations were levelled against Jharkhand Badminton Association. It is stated that nothing was shown to the Petitioner nor any copy was given to the Petitioner about the allegations and, therefore, the Petitioner had not filed any reply. This fact has been stated in the internal page No. 2 of the impugned order that Respondent Nos. 1 to 3 (Jharkhand Badminton Association) though remained present on 2nd February, 2011, they have not stated anything at the time of hearing and, thereafter, the impugned order has been passed.

(iv) It appears that, in fact, no hearing has taken place on 2nd February, 2011. The show cause notice which is at Annexure 2 is absolutely vague show cause notice. There is no hearing in the eye of law, on 2nd February, 2011 because the Petitioner has gone before Respondent No. 2 in search of the allegations levelled against him. Thus, the so called hearing dated 2nd February, 2011 is no hearing in the eye of law. On the basis of the aforesaid so called hearing dated 2nd February, 2011, the impugned order has been passed. Several facts have been stated in the impugned order, which are denied by the Petitioner. Impugned order cannot travel beyond show cause notice. Thus, prima facie, it appears that no hearing has taken place and no valid hearing has been given to the Petitioner.

(v) Section 23 of the Societies Registration Act, 1860 reads as under:

(23. Cancellation of registration in certain cases-

(1) Notwithstanding any-thing contained in this Act, the Inspector-General Registration may, by order in writing, cancel the registration of any society registered under this Act whose office has ceased to be in the State of Bihar by reason of the reorganisation of States or change of the office from the State of Bihar to another State or whose activities are subversive to the objects of the society;

Provided that the Inspector-General of Registration shall, before passing any order, make such inquiry as he considers necessary;

Provided further that no order of cancellation of registration of any society on the ground of the activities of the society being subversive to the objects of the society shall be passed until the society has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to it.

(2) An appeal against an order made under Sub-section (1) may be preferred in such manner, within such time and to such authority as may be prescribed and such authority shall consider and dispose of such appeals in the prescribed manner.

(3) The decision of the appellate authority under Sub-section (2) shall be final)

(Emphasis supplied)

Similarly Rules 12 and 13 of Bihar Societies Registration Rules, 1965 enacted in exercise of the power conferred by Section 24 of the Societies Registration Act, 1860 read as under:

12. The Inspector-General of Registration may in his discretion institute such inquiries or investigations in respect of any matter as may in his opinion be necessary for the proper working of the society and administration of the Act specially when there is a suspicion that the society is engaging itself in activities which are subversive to the objects of the society or the office of any registered society has ceased to be in the State of Bihar. Any original documents or other papers called for from the registered society shall be produced before the Inspector-General of Registration or any officer authorised by the Inspector-General of Registration to enable him to examine the affairs of the society or to enquire into any complaint received against any society.

13. In case the Inspector-General of Registration is satisfied that there is a prima facie case against a society for its cancellation, he shall issue a show cause notice in a registered cover asking the society to show cause within thirty days from the date of issue of the notice why the registration of the society should not be cancelled. After consideration of the show-cause and no being satisfied that the charge is proved the Inspector-General of Registration shall, by order in writing, cancel the registration of the society u/s 23.

(Emphasis supplied)

In view of the aforesaid provisions of the Act, 1860 and the Rules, 1965, it appears that before cancellation of registration, reasonable opportunity of showing cause against the action proposed to be taken should be given to the Society. Thus, the grant of opportunity of being heard is mandatory in nature, which, in the facts of the present case, have been violated. Thus, the impugned order is also violative of Section 23 of the Act, 1860 as well as of the Rules, 1965 and, hence also, the impugned order deserves to be quashed and set aside.

(vi) It has been held by the Hon"ble Supreme Court in the case of Board of Technical Education, U.P. and others Vs. Dhanwantri Kumar and others, in paragraphs 2 and 3, which read as under:

2. We have perused the records and heard counsel on both sides. On the peculiar facts and in the special circumstances of these cases, we are of the view that the High Court was justified in coming to the conclusion, which it did, that the notices served on the students were so vague and imprecise that they could not effectively defend themselves in the inquiry.

3. In the circumstances, we see no reason to interfere with the impugned orders. The appeal and the Special Leave Petitions are accordingly dismissed. We make no order as to costs.

(Emphasis supplied)

Thus, the notice given to the Petitioner was so vague and imprecise that the Petitioner could not effectively defend himself and, hence also, the impugned order deserved to be quashed and set aside.

(vii) It has been held by the Hon"ble Supreme Court in the case of B.D. Gupta Vs. State of Haryana, in paragraphs 10 and 15, which read as under:

10. We were told that since the Appellant was aware of the charge and also aware of the reply he had given to the charges made against him, it was enough for Government to tell him that his answer was unsatisfactory. It was argued that since the "show-cause notice" really pointed this out and mentioned that the very lenient sentence of censure upon the Appellant's conduct was going to be imposed, there was nothing further that Government could be expected to do in this case. We have no hesitation in rejecting this contention made out on behalf of the State. It is manifestly clear that the "show-cause notice" was too vague to permit the Appellant to deal with it effectively and that consequently the order of censure passed on him is bad and liable to be struck down.

15. We have no doubt in our minds that in this case also justice and fair play demand that the Government should have given the Appellant a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should not be made.

(Emphasis supplied)

(viii) It has been held by the Hon"ble Supreme Court in the case of Nasir Ahmad Vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, in paragraphs 3 and 4, which read as under:

3. The facts stated above clearly show that the notice and the declaration that followed are both invalid. The notice called upon the Appellant and his brother to show cause why they should not be declared evacuees under Clause (iii) of Section 2(d) of the Act and the ground mentioned in the notice was also based on "that clause, yet the Assistant Custodian found that they were evacuees under Clauses (i) and (ii) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on Clause (iii) was vague and the notice was defective so far as that ground was concerned, but that was the only case the Appellant was called upon to answer. The foundation of a proceeding u/s 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the Appellant was an evacuee under Clauses (i) and (ii) of Section 2(d) of the Act must be held invalid.

4. Under Rule 6 the notice u/s 7 must be issued in the prescribed form and contain the grounds on which the property is sought to be declared evacuee property. As stated earlier, the notice that was issued in this case merely reproduced the form without mentioning the particulars on which the case against the Appellant was based. It was essential to state the particulars to enable the Appellant to answer the case against him. Clearly therefore the notice did not comply with Rule 6 and could not provide a foundation for the proceedings that followed.

(Emphasis supplied)

(ix) It has been held by the Hon"ble Supreme Court in the case of Food Corporation of India v. State of Punjab and Ors. reported in (2001) 1 SCC 291 in paragraphs 12 and 13, which read as under:

12. On a reading of the afore-quoted provisions, it is clear that while vesting the power in the committee to amend an assessment list, the legislature has taken care to specify the circumstances in and the grounds on which such amendment may be made; it has also laid down the manner in which such amendment or revision of the assessment list is to be made. Care has also been taken to comply with the principle of natural justice by making the provision for giving notice to the person who is likely to be affected by the proposed amendment giving him not less than a month's time to tender objection, if any, to the committee and allowing him an opportunity of being heard in support of the objections raised. Notice to the affected person mandated in the section is not an empty formality; it is meant for a purpose. A vague and unspecific notice will not provide reasonable opportunity to the noticee to file objection meeting the reasons/ grounds on which the amendment of the assessment list is proposed to be made. Such a notice cannot be taken to be complying with the statutory requirement.

13. On a perusal of the notice issued to the Corporation, which is on record, it is evident that the notice is vague and lacks particulars. It neither states the reason for/or the ground on which the amendment is proposed to be made nor does it indicate any material on the basis of which the revision as stated in the notice is proposed to be made. It is stated in the notice:

Whereas your abovementioned property has wrongly been left out from the assessment list, whereas it should have been in the same. Whereas the assessment of this property of yours was assessed less due to inadvertent mistake/fraud or intention, which needs amendment thereby.

It is apparent that the Committee is not sure on which ground it proposes to proceed for amending the assessment list. Such a notice not only does not comply with the statutory requirements, it also defeats the very purpose of the statutory provisions.

(Emphasis supplied)

(x) Thus, in the facts of the present case also, no particulars were given about the allegation levelled against the Petitioner in the show cause notice issued by the Respondents, which is at Annexure 2 to the memo of the petition. When there is statutory requirement to give a show cause notice, only thereafter, an order of cancellation of registration can be passed u/s 23 of the Act, 1860 to be read with Rules 12 and 13 of the Rules, 1965. Giving show cause notice, is not an empty formality to be performed by the Respondents. A vague, imprecise and unspecific notice will not provide reasonable opportunity of being heard to the noticee.

(xi) Once the notice is vague, imprecise and unspecific and when there is lack of particulars, consequential order, which is an impugned order at Annexure A to the memo of the counter affidavit dated 15th June, 2011 deserves to be quashed and set aside because the impugned order is travelling beyond the scope of notice.

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the impugned order passed by Respondent No. 2 dated 15th June, 2011 at Annexure A to the memo of the counter affidavit. Liberty is reserved with the Respondent-State authorities to issue fresh and proper show cause notice putting all the allegations levelled against the Petitioner, if they are so choosing, and give adequate time to the Petitioner to give reply and after giving adequate opportunity of being heard to the Petitioner, a decision may be taken by the Respondent-State authorities, in accordance with law, rules, Regulation, polices.

8. The writ petition is allowed and disposed of.