(2008) 05 PAT CK 0055

In the Patna High Court

Case No : CWJC No. 5664 of 2008

Kumari Shobha Sinha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-05-2008

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 8
Bihar Panchayat Raj Act, 2006 — Section 70(5)

Citation : (2008) 2 PLJR 783

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : D.K. Sinha, Rajendra Prasad Singh and Sajid Salim Khan, for the Appellant; P.K. Shahi, M/s Tara Kant Jha, Abhay Kumar Singh, Ajay Kumar Singh and Brajesh Kumar for Respondent 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner, learned Counsel for the State, Zila Parishad and private respondents 3 and 4. The petitioner was elected as a Member of the Zila Parishad, Gaya in 2006 and later as the Chairman of the Zila Parishad on 3.7.2006. Respondent No. 2 in Case No. 39 of 2007 by order dated 20.3.2008 has unseated her from the post of Chairman in exercise of powers u/s 70(5) of the Bihar Panchayat Raj Act 2007 (hereinafter referred to as the Panchayat Act) which reads as follows:-

"70. Resignation or Removal of Adhyaksha and Up-Adhyaksha,-

5. Without prejudice to the provisions under this Act, if in opinion of the Commissioner having territorial jurisdiction over the Zila Parishad, a Adhyaksha or the Upadhyaksha of Zila Parishad absents himself without sufficient cause for more than three consecutive meetings or sitting or willfully omits or refused to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapaci tated for performing his duties or is

absconding being an accused in a criminal case for more than six months, the Commissioner may, after giving the Adhyaksha or the Upadhyaksha, as the case may be, a reasonable opportunity for explanation, by order, remove such Adhyaksha or the Upadhyaksha as the case may be, from office.

The Adhyaksha or Upadhyaksha so removed shall not be eligible for re-election as Adhyaksha or Upadhyaksha during the remaining term of office of such Zila Parishad.

Appeal shall lie before the Member, Board of Revenue against the order of the Commissioner.

(2) An Adhyaksha or Up-adhyaksha removed from the office under sub-section (1) may also be removed by the Government from the membership of the Zila Parishad.

2. Learned Senior Counsel Shri Rajendra Prasad Singh appearing for the petitioner submitted that on 7.1.2008 a show cause notice was issued to the petitioner on a complaint petition. She filed her reply on 10.1.2008. On 4.2.2008 an amendment was made and published to Section 70(5) of the Panchayat Act. The words "Commissioner" was substituted by the words "Government". A second show cause notice followed dated 13.2.2008 issued on 16.2.2008. It was apparent that the earlier show cause notice and the reply were ignored by the authorities who decided to proceed afresh in the matter. Paragraph 14 and 15 of the order dated 13.2.2008 is reflective of fresh application of mind by respondent No. 2 obliterating earlier actions. In view of the amendment having come into operation on 4.2.2008 the show cause notice dated 13.2.2008 was without jurisdiction as the competent authority now was the State Government. The very initiation of the proceeding being without jurisdiction the order dated 20.3.2008 was a nullity. Alternatively, if the proceedings are deemed to have commenced on 7.1.2008 the same lapsed by operation of law on 4.2.2008. He relied upon the following judgments reported in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, , General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, , 1991 BBCJ 693 : 1991(2) PLJR 783(F.B.) (Gobardhan Lal Soneja vs. Binod Kumar Sinha & Ors) and New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, .

3. Learned Senior Counsel Shri Abhay Kumar Singh appearing on behalf of the private respondent No. 3 on whose application the proceedings against the petitioner was initiated conceded that if the proceedings were not initiated against the petitioner before 4.2.2008, the same would not be sustainable and the impugned order shall be bad in law. But if it was initiated prior to the amendment of 4.2.2008 then the proceedings shall be saved u/s 8 of the Bihar and Orissa General Clauses Act. Relying upon a supplementary counter affidavit filed on 14.5.2008 by Annexure 1/3 it was urged that in pursuance of the complaint proceedings were in fact initiated on 26.12.2007. The proceedings were therefore clearly saved and the impugned order being reasoned and

considered required no interference. Alternatively even if the General Clauses Act did not apply, invoking the general principles with regard to the vested right of a forum available, this Court should not, interfere with the impugned order. He relied upon the following judgments. State of Punjab Vs. Harnek Singh, , Her Highness Maharani Shantidevi P. Gaikwad Vs. Savjibai Haribai Patel and Others etc. etc., , Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, , Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, and 1994 (Suppl.) 1 SCC 257 (Commissioner of Income Tax Orissa vs. Thari Sahu) and Commissioner of Income Tax, West Bengal I and Another Vs. Allahabad Bank Ltd., .

4. Learned Advocate General appearing for respondents 1 and 2, Shri D.K. Sinha, learned Senior Counsel appearing for respondent No. 5 and learned Counsel for the second complainant respondent No. 4 have adopted the arguments made by Shri Singh. No submissions have been made on behalf of the official respondent No. 6.

5. On 26.12.2007 complaint was filed by respondents 3 and 4. Show cause notice was issued to the petitioner by the Secretary to respondent No. 2 on 7.1.2008. The petitioner submitted her rely on 10.1.2008. On 18.1.2008 respondent No. 2 called for comments on the matter from the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad who gave his comments on 25.1.2008. Respondent No. 2 then ordered issuance of a show cause notice to the petitioner u/s 70(5) of the Panchayat Act on 13.2.2008 which came to be issued on 16.2.2008. The petitioner gave a fresh reply on 4.3.2008 questioning the jurisdiction of respondent No. 2 in view of the amendment made in the meantime in Section 70(5) of the Panchayat Act vesting the powers in the State Government now in place of the Commissioner.

6. The show cause notice dated 7.''1.2008 was not issued by the Statutory Authority, the Commissioner, but by his Secretary. The Commissioner at this stage was yet to make up his mind whether to proceed u/s 70(5)of the Panchayat Act or not against the petitioner. He therefore called for a report from the Deputy Development Commissioner cum Chief Executive Officer. The statutory authority, respondent No. 2, was then satisfied and proceeded to issue a show cause notice on 13.2.2008. Prior to 13.2.2008 a preliminary enquiry was afoot to decide whether to proceed u/s 70 (5) of the Panchayat Act or not. In absence of a notice to show cause from the statutory authority prior to 13.2.2008 no proceeding can be said to have been initiated before the said date. Had it been otherwise, there was no occasion for issuance of a fresh show cause notice by the statutory authority and all that was required was passing of final orders on the cause shown by the petitioner on 10.1.2008. The mere fact that a complaint was received on 26.12.2007 does not tantamount to initiation of proceedings. After the preliminary enquiry proceedings may have been initiated or may not have been initiated.

7. The concept of a preliminary enquiry, as a precursor to an action for a proper

departmental enquiry is well known in service jurisprudence. This Court shall appropriately refer to a judgment in State of Punjab and Others Vs. Balbir Singh, . A Police Constable was discharged from service as unlikely to be an efficient police officer. The question was if it was punitive and illegal in absence of a departmental enquiry. An enquiry was held whereafter the order came to be passed. The discharge was assailed for lack of a full fledged departmental enquiry. The Court held that the enquiry was in the nature of a preliminary enquiry to ascertain whether the Constable was unlikely to prove as an efficient police officer. In the nature of the order no departmental enquiry was mandatory. On 13.2.2008 the respondent No. 2 did not have the jurisdiction in view of the amendment made with effect from 4.2.2008. The proceedings are therefore without jurisdiction. The Court holds that proceedings Were initiated u/s 70(5) of the Panchayat Act on 13.2.2008 after issuance of show cause notice by the statutory authority.

8. When a statutory authority acts, it acts impersonally. This is an essential requirement of the adage that justice must not only be done but must appear to be done. The statutory authority is expected to act with sobriety, dispassionately, objectively detachment. He must not do anything which reflects lack of the aforesaid qualities.

9. In S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, , this aspect came to be considered in Paragraph 25 of the judgment which this Court considers proper to quote below:-

"25. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the interse dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter. thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, filed review'' petition, appeal etc. it gives an impression that it is espousing the cause of a particular group, of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feet the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned."

10. In the present case the statutory authority respondent No. 2 passed the impugned order on 20.3.2008. Thereafter matters were not his concern, even if it suffered from an infirmity in law of lack of jurisdiction. The orders of the Principal Secretary, Panchayati Raj, Government of Bihar (Respondent No. 6)

dated 2.4.2008 holding the impugned order of respondent No. 2 to be without jurisdiction was a matter to be agitated by the private aggrieved persons i.e. respondents 3 and 4. There was no occasion for the statutory authority to take up the issue on his own initiative and in pursuance thereof suo-moto issue a communique dated 3.4.2008 that respondent No. 6, Principal Secretary, Panchayati Raj, Government of Bihar, an authority administratively superior to him had no locus standi in the matter and that his order dated 2.4.2008 was non est, not liable to be implemented. The communique is appropriately quoted hereunder:-

"Court of the Commissioner, Magadh Division, Gaya

ORDER

The order passed by the Divisional Commissioner as court under Quasi Judicial proceeding and said order can only be challenged before Member Board of Revenue. The above authority is only competent to pass any orders whatsoever. This Court''s order cannot be reversed by any office order by any Secretary of the Dept. and the said Principal Secretary of Panchayati Raj has no role to pass any order. So the order said to be communicated under Memo No. 1706 dt. 2.4.08 is non est order, hence not liable to be implemented.

End: Letter No. 1706 dt. 2.4.08

Commissioner Magadh Division, Gaya"

To quote from the counter affidavit at paragraph 5:-

"In the said facts and circumstances it is felt necessary to clarify the position and status of the order dated 20.3.2008 by passing an order on 3.4.2008 and releasing the same for the press as much confusion arose after publication of the said office order in several news papers...."

(emphasis added)

11. Propriety was the hallmark of the statutory authority not consistent with issuance of a press communique and administrative discipline. This action is per se evidence of mala fides in law.

12. No submissions have been made on behalf of Respondent No. 6 though the official respondents are duly represented. His orphanisation is difficult to fathom.

13. In view of the finding arrived at that no proceeding was initiated u/s 70(5) of the Panchayat Act prior to 13.2.2008 the larger issue of the question of applicability of Bihar General Clauses Act looses relevance for determination of the present controversy.

14. The impugned order dated 20.3.2008 is, therefore, set aside. The petitioner stands reinstated as the Chairman of the Zila Parishad. This shall however be without prejudice to the rights of the statutory authority to proceed afresh in accordance with law, if it is so satisfied. The writ application stands allowed.