

(2012) 04 PAT CK 0021

In the Patna High Court

Case No : CWJC No"s. 2905, 3446, 3736, 3342, 4832, 4938, 3263, 3763, 4961, 3477, 5281, 3303, 5145 of 2012 and 19177 of 2010

Manjula Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 1 PLJR 901

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Praveen Kumar Agrawal in 2905, Mr. Amarendra Kumar Singh in 3446, Mr. Praveen Kumar in 3736, Mr. Mritunjay Prasad Singh, Rajesh Kr. Singh in 3342, Mr. Rakesh Kumar in 4832, 4938, 4961 and 5145, Ms. Juhi Kumari in 3263, Mr. Tuhin Shankar in 3763, Praveen Kumar Agrawal, Radhey Shyam Prasad in 3477, Ms. Sushmita Mishra in 19177, Mr. Shyameshwar Dayal in 3303, Rakesh Kumar and Krishna Kumar Singh in 5281, for the Appellant; V.M.K. Sinha, Anil Kr. Verma in 2905, Mr. Nirbhay K. Singh in 3446, Mr. Kumar Sachin in 3736, Rajesh Kumar, Mithilesh Kr. Upadhyay, Ms. Kumari Amrita in 3342, Mr. Sunil Kr. Ravi in 4832, Mr. Amaresh Kumar Singh in 4938, Ms. Kumari Amrita in 3263, Mr. S.A. Alam in 3763, Mr. Jawahar Pd. Karn in 4961, Praboon Sinha, Dilip Kumar in 3477, Santosh Kr. Mishra, Sanjay Kumar Pandey, Manoj Kumar Ambastha in 19177, Bipin Chandra, Debeudar Kr. Sinha in 5281, Mr. M.D. Dwivedi in 3303 and Mr. Devendra Kr. Sinha in 5145, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the State. In this batch of writ applications, the facts are identical except that the dates of the impugned orders may differ, the nature of the allegations for dereliction in discharge of duties may differ alongwith the Anganwari Centers. The questions of law involved are common. The cases have therefore been heard together and are being disposed by a common order.

2. Learned Counsel on both sides have made individual submissions. They shall

be considered collectively. To facilitate better appreciation and easier understanding the Court shall refer to the facts from C.W.J.C. No. 2905 of 2012. The discussion shall apply with equal force to each of the petitioners. No counter affidavit has been filed despite adjournment granted.

3. The petitioners are aggrieved by order dated 23.12.2011 passed by the District Programme Officer removing them as Anganwari Sewikas. It was preceded by an inspection carried out by the Assistant Director, I.C.D.S. Directorate, in the Department of Social Welfare, as a State level inspecting team consisting of one person only. On 24.8.2011, the Director, I.C.D.S. (hereinafter referred to as the "Director") wrote to the District Programme Officer, referring to the inspection report requiring the latter to terminate the Anganwari Sewika, obtain an explanation from the Child Development Project Officer and submit a compliance report. The District Programme Officer issued a show cause notice on 1.10.2011 stating that he had been instructed by the Director to cancel the appointment. The second part of the notice asked for cause to be shown. The report of the Assistant Director was not enclosed.

4. Anganwari Workers are Agents of the State Government for dissemination of a Welfare Scheme to make available food-grains to poor and needy children as also pregnant women. The appointments are not in Government service. The procedure for appointment and removal are governed by administrative guidelines issued by the Social Welfare Department. The latest guidelines have been published on 4.11.2011 replacing the earlier guidelines of 2006 and 2010. Relevant for the present controversy are Clause 10.5 to 10.8. The guidelines of 2010 for the purpose of the present controversy are substantially the same. They read as follows:--

5. It was urged on behalf of the petitioners that the inspection by the Assistant Director was done behind their back. If the centre was closed as alleged or food-grains were improperly distributed or registers were not up to date, they were required to be given an opportunity to explain before the report was submitted to the Director. Whether the explanation would be acceptable or not is an entirely different matter. Alternately, the Director should have furnished them a copy of the inspection report, called for and considered the reply before sending it to the District Programme Officer for action. The District Programme Officer has acted as the mouthpiece of the Director abdicating his own jurisdiction completely. He Has acted at the behest and on the dictates of the Director. The hearing given by him was a futility, an empty formality and a sham. The show cause notice discloses a closed mind that he was under instructions from the Director to terminate on basis of the report of the Assistant Director.

6. The show cause notice issued by the District Programme Officer was based on presumption that because the Center was found closed during inspection by the Assistant Director it was reflective that the Centre was mostly closed and that food-grains were being embezzled by the Sewikas/Sahayikas. There is no material on what basis the presumption was arrived at. The show cause notice

was vague. The impugned order notices the defence that the timings for running of the Centre had been changed but not intimated to the petitioners. It finds no consideration.

7. In some of the cases it is the District Magistrate who has passed the order of termination. (C.W.J.C. No. 19177 of 2010 and C.W.J.C. No. 3263 of 2012). In some of the writ applications arguments have been made that the report of the Assistant Director indicts the C.D.P.O. and the District Programme Officer. Yet the District Programme Officer himself has been asked to hear the allegations. In C.W.J.C. No. 3342 of 2012. It has been argued that the State Level Inspection Team can recommend removal of Sewika but not a Sahayika.

8. Learned counsel for the State submitted that the Director did not order termination on the report of the Assistant Director. A proposal for termination was only forwarded to the District Programme Officer who was required to act independently. The latter issued a show cause notice and decided matters on his own wisdom. The report of the Assistant Director was akin to a charge-sheet in a criminal trial or a memo of charge in a departmental proceeding which may be a prima facie opinion but was not conclusive till it was proved in the course of the proceedings. If the District Programme Officer did not act in accordance with law and mechanically or wrongly terminated in pursuance of the proposal of the Director action would be taken against him under Clause-10.8.

9. Clause-10.5 provides that in the event of a complaint for irregularities in running the Centre by a Sewika/Sahayika, the District Programme Officer shall pass an order within 30 days. Clause-10.6 provides that an Appeal may be filed within 30 days from the date of the order before the District Magistrate.

10. Clause-10.7 reads that the Director on a report received from the State Level Inspection Team will give instructions for removal of the concerned Sewika/Sahayika. The concerned District Programme Officer shall then give an opportunity to the concerned and after hearing pass final orders for removal. No Appeal shall lie in such cases.

11. Clause-10.8 provides for the District Programme Officer to send details of the complaint, show cause notice, cause shown and the order passed for removal to the Director. It shall be scrutinized on a 10% random basis. If orders were found based on extraneous reasons action would be taken against the C.D.P.O. and him including suspension and departmental proceeding. This Clause has to be read with Clauses 10.5 and 10.6 under which the District Programme Officer acts by independent application of mind. It has no application to Clause-10.7 when the action is taken on directions from superior sources.

12. Anganwari Sewikas/Sahayikas constitute one class of persons as Agents. The eligibility and methodology for selection are common. The nature of the duties commonly consist of running Anganwari Centres to provide food-grains to poor and needy children, pregnant women. The supervisory powers exercised over them are similar. Anganwari Sewikas/Sahayikas who commit civil irregularities in

the running of the Centre constitute one class. The nature of the alleged irregularity cannot constitute a basis for sub-classification. Variation in irregularities such as the centre being closed during normal hours, improper distribution, non-maintenance of records cannot be a basis for sub-classification. If they constitute one class, there cannot be two different procedures to deal with them, one simple and the other onerous. There is a provision for Appeal in one but not in the second. If one class of persons are to be subjected to different treatment there has to be a justification and the basis for differentiation must have a nexus with the object to be achieved by such classification. Under Clauses 10.5 and 10.6, the District Programme Officer acts independently. The procedure gives him the discretion to drop a proceeding if the cause shown is satisfactory. An appellate remedy is available to the aggrieved. Under Clause 10.7 a report for irregularities is submitted by the State Level Inspection" Team to the Director. The Director then issues instructions/directions to the District Programme Officer for cancellation of the agent. The District Programme Officer then issues notice and orders termination.

13. The word "Team" for a "State Level Inspection" presupposes participation by more than one person. There is no definition of the term in the guidelines. If the term consists of more than one person there is an automatic check and balance as distinct from individual assessment. The guidelines do not provide for a copy of the inspection report to be given. The report is a *fait accompli*. Opportunity to persuade that the report was not correct or that she had an explanation with regard to the irregularities alleged is denied. Accepting the *ex parte* report as gospel truth the Director on 24.8.2011 orders the District Programme Officer to terminate. If the Director superior in rank issues instructions for cancellation to the District Programme Officer it is difficult to appreciate what independence or discretionary powers are left with the District Programme Officer. Administrative discipline requires him to comply the directions of the superior. The show cause notice issued by him states that he has received directions from the Director to terminate and then seeks cause to be shown. The termination order likewise refers to the recommendation by the State Level Inspection Team and the directions for termination issued by the Director. The lack of independent exercise of power is apparent when the District Programme Officer notices the objection that the changed timings for running the centre was not informed to the Agents, but declines to decide the same.

14. Article 14 of the Constitution prohibits class legislation but permits classification. The classification made to distinguish one set of persons from another must have a rational basis with the object sought to be achieved by such classification. If the classification is arbitrary and has no nexus with the object to be achieved, the classification becomes arbitrary. Sub-classification or micro-classification normally is prohibited.

15. The test on the anvil of Article 14 was considered in *A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Others*, holding as follows:--

18. It is well-settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that the legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable inasmuch as there must be nexus to the object sought to be achieved by it.

16. The guidelines in Clause-10.7 do not contain any directions when the procedure extraordinary as distinct from the power to be exercised by the District Programme Officer independently under Clauses 10.5 and 10.6 has to be followed. In absence of any guiding criteria from two different procedures with regard to one class of persons it falls foul on the touchstone of Article 14 of the Constitution.

17. In *The State of Orissa Vs. Dhirendranath Das* noticing two different procedures under which enquiry could be ordered, one more drastic, it was held at Paragraph-5 as follows:--

5. If the two sets of rules were in operation at the material time when the enquiry was directed against the respondent and by order of the Governor, the enquiry was directed under the Tribunal Rules which are "more drastic" and prejudicial to the interests of the respondent, a clear case of discrimination arises and the order directing enquiry against the respondent and the subsequent proceedings are liable to be struck down as infringing Art. 14 of the Constitution.....

18. In *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, it was held at Paragraph-14 as follows:--

14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field coveted by the

ordinary procedure, as in Anwar Ali Sarkar case and Suraj Mall Mohta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14.....

19. Rules of natural justice are not like statutory rules embodied in any prescribed form. What shall be its meaning and connotation will depend on the facts of each case. The rights to a hearing, that no man shall be a Judge in his own cause, the passing of a reasoned order are not the only facets of natural justice. It is an old adage that justice must not only be done but that it must appear to be done. Procedural fairness and reasonableness of the process for decision making is a part of the principle of natural justice. If there is any prescription which fetters the jurisdiction, power and authority of the person deciding, it vitiates the exercise of the power. In *Dr Rash Lal Yadav Vs. State of Bihar and Others*, explaining the expanding concept of natural justice it was held as follows:--

6. The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause, and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary

as in the present case.....

20. The guidelines do not provide for furnishing a copy of the State Level Inspection Team report to the concerned on which the proceedings originate, it amounts to condemning the person unheard. The show cause notice dated 1.10.2011 from the District Programme Officer does not enclose the inspection report but only refers to the same.

21. The submission on behalf of the State that the Director only forwarded a proposal to the District Programme Officer and that the discretion of the District Programme Officer remained unhindered is too unrealistic for the Court to accept applying the standards of an ordinary reasonable and prudent person. The Director being superior in rank to the District Programme Officer, the Court finds it very difficult to accept that the District Programme Officer has the administrative authority and shall dare to differ with the report of a State Level Inspection Team forwarded to him through the Director with instructions to terminate.

22. In V.K. Ashokan Vs. Asstt. Excise Commr. and Others, it was noticed that if the higher authority had already made up its mind for cancellation of licence, administrative discipline would require that it is complied with. Issuance of a notice to show cause thereafter by a subordinate official was an empty formality holding at Paragraphs-49 to 52 as follows:--

49.....The submission of Mr. Iyer that in few of the matters the Assistant Commissioner of Excise had served notices before the recovery proceedings had been initiated cannot be accepted for more than one reason. Such a notice had been issued only pursuant to the order passed by the higher authority, namely, the Commissioner of Excise. As the higher authority had already made up his mind and confirmed forfeiture of the security as also cancellation of licence, administrative discipline would require that it is complied therewith. Issuance of such notices was, therefore, a mere formality.

Secondly, because when an authority has already made up his mind, the formality of complying with the principles of natural justice may be held to be a nominal and sham one.

52. We have noticed hereinbefore that the Commissioner of Excise being a higher authority had already expressed his opinion that application of Rule 6(28) of the Rules is automatic consequent upon the cancellation of licence in terms of sub-rule (30) of Rule 6. The Assistant Commissioner of Excise could not have taken a different view. If only the Assistant Commissioner of Excise had the original authority to issue such a notice and not the Commissioner of Excise being a higher authority, the law laid down by this Court in Commr. of Police vs. Gordhandas Bhanji would have been applicable. The proceeding, thus, in a case of this nature should have been initiated by the Assistant Commissioner of Excise and not by the Commissioner of Excise. Where the statutory authority, it is well known, exercises its jurisdiction conferred on it by a statute, it has to apply its

own mind and the procedures laid down therefore must be scrupulously followed.

23. The nature of the show cause notice presently issued, bound by the instruction of the Director to terminate was rightly urged on behalf of the petitioners that the District Programme Officer shall be acting with a closed mind finds full support from ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, holding as follows:--

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

24. The aspect discussed hereinabove with regard to procedural fairness also raises issues of what is described as justice rooted in confidence arousing satisfaction in the person dealt with as discussed in Paragraph-28 as follows:--

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

Once the Director issued instructions for termination, the discretion of the District Programme Officer was not only fettered, but there would also be a tendency in him to somehow or the other find justification to uphold the State Level Inspection Team report as discussed in K.I. Shephard and Others Vs. Union of India (UOI) and Others, holding:--

16. ... It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

25. What the District Programme Officer essentially seeks to do is to hold a post decisional hearing after the Director has taken a decision to terminate. The advantage which an original hearing has cannot be substituted by a post decisional hearing. The original authority acts with an open mind. It is easier to

persuade him. Once a decision has been taken, normal human behavior dictates that it is an arduous task to first convince the person that the earlier decision was wrong and then to persuade to take another view. Explaining the advantage of an original hearing as distinct from a post decisional hearing holding that the latter can never be a substitute for the former it was held in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, at Paragraph-18 as follows:--

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal.... "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal..... In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision.And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.

26. On 20.3.2012 an amendment has been made in Clause 10.7 providing for an Appeal against the order of the District Programme Officer before the District Magistrate and then within a further period of 30 days before the Director. The District Magistrate sitting in Appeal over the order of the District Programme Officer is likewise not free from the fetter of the conclusive opinion of the Director. There shall be a tendency in the District Magistrate also to uphold the order. If the Director at the initial stage accepted the report as a gospel truth and issued directions for cancellation it is difficult to understand what fairness and reasonableness the Director will exercise against his own order when it travels to him in Appeal routed through the District Magistrate.

27. While the discussion in the present order has been on questions of law, the Court is conscious of the fact that the Anganwari Sewikas/Sahayikas are Agents. The relationship between them and the State Government is contractual in nature, of a Principal and Agent. The appointment is made for dissemination of a Welfare Scheme of the Government to make available food to the poor and needy children. The State Government should not and will not accept any dereliction in discharge of duties by such an Agent in view of the sensitive nature of the scheme having a laudable social object. The Supreme Court has monitored this welfare project also. It shall not be the jurisdiction of the writ Court to sit in judgment over the decision of the State authorities to decide who is a good agent and who is not. The power has to vest in the respondents. The Court cannot substitute its opinion and thrust its views by imposing an Agent upon an unwilling Principal.

28. But because the principal happens to be the State Government and its dealings are with the citizen, though the relationship is given the nomenclature of contractual, the Court shall ensure that the manner and procedure for dealing with such Agents by the State fulfills the basic requirement of being fair, just and reasonable.

29. To decline interference only on the ground that the relationship was contractual, those appointed were not Government servants, who was best suited as an Agent leaving matters in the discretion of the respondents, may vest arbitrary and uncanalised power to replace one agent by another at the drop of a hat at the sweet will of the concerned simply making allegations for dereliction in discharge of duties without the requirement to support the same in accordance with law. While there will be genuine cases for removal, there will also be a situation where the removal may not be justified. The actions shall have to be balanced. The balancing factor shall be the law.

30. A proceeding initiated by the District Programme Officer on a complaint made and pursuant to a report of the State Level Inspection Team cannot be put at par. The latter may carry a greater presumption of its correctness but it shall not be absolute. If power is vested on presumptions, the procedure must arouse greater confidence and the need shall be for more checks and balances. The presumption that power vested in high officials shall be exercised properly is not absolute.

31. A Division Bench in Smt. Sajjan Devi and Others Vs. State of Bihar and Others, has held that even if Anganwari Sewikas do not acquire the status of a Government servant still the basic prerequisite for exercise of power to remove in accordance with law shall apply to them and natural justice will have to be complied with.

32. The impugned orders for removal, because of the manner in which the power has been exercised, are held to be unsustainable and are accordingly set aside. Nothing prevents the respondents from proceeding afresh in accordance with law. The writ applications are allowed.