

(2018) 02 CHH CK 0160
In the Chhattisgarh High Court
Case No : WP227 No. 880 Of 2017

Niramaladas President Jay Maa Ambey Mahila Swa Sahayata
Samuh And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Citation : (2018) 02 CHH CK 0160

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Govind Dewangan, Adhiraj Surana

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The instant petition is against the order dated 10.11.2017 passed by the Additional Commissioner, Bilaspur Division in Appeal Case No.68A/2013-14. By such order, order dated 28.03.2014 passed by the Collector, Janjgir, District Janjgir-Champa has been affirmed whereas the Collector in turn had affirmed the order passed by the SDO on 24.06.2013.

3. Learned counsel for the petitioner would submit that the basic order which was under challenge was of 29.01.2013 whereby a notice was served by the S.D.O., Janjgir-Champa to the petitioner to appear on 26.06.2013 calling for reply. However, instead of fixed date of 26.06.2013 the case was taken up without hearing before such date and an order was passed on 24.06.2013. Therefore, the initial order which was subject of challenge was without any hearing to the petitioner. It is contended that the subsequent appellate Courts also did not able to appreciate the apparent defect on the face of the record that no hearing was given to the petitioner instead has further affirmed the cancellation of supply of mid day meal. Therefore, it is contended that the order

impugned may be set aside.

4. The State counsel submits that there might have been some typographical mistake in the notice dated 29.01.2013 wherein the date of appearance was stated to be on 26.06.2013 i.e. after 5 months. He would further submit that the petitioner is trying to take advantage of the typographical mistake and the order of the respective authorities below are well merited which do not call for any reply.

5. In order to ascertain the facts the original record of the case file was called. The state has produced the original case file of subject issue of S.D.O. in regard of village Changori in respect of the Mid Day Meal. The case file shows that a recommendation is made by the C.E.O., Janpad Panchayat, Akaltara, raising some complaint against Jay Maa Ambey Mahila Swa Sahayata Samuh on finding of short coming and to cancel the mid day meal. Thereafter, the note-sheet contains that the information was gathered for the same. Thereafter, the order-sheet day by day wise opened.

6. The order-sheet of 24.01.2013 makes a reference of a letter of Block Education Officer, Akaltara dated 23.01.2013, whereby a request was made to cancel the order of supply of mid day meal through the petitioner and a recommendation was made to give the work to Jay Maa Gayatri Mahila Swa Sahayata Samuh, Village Changori. Then the SDO's recommendation is enclosed that notice is served for cancelation. Thereafter, the order-sheet dated 26.02.2013 records that no one is present, therefore, again notice was issued and the next date was given for 28.02.2013. The order-sheet of 28.02.2013 do not appear and order-sheet of 26.04.2013 is on record, which records the notice be issued to the President and the Secretary again and the date was given on 15.05.2013, which was subsequently amended to 03.06.2013. The original record file of the State shows a notice was issued bearing No.35@LVsuks@v0fu0v0@13 dated 29.01.2013, wherein the date of appearance was corrected by pen as 26.02.2013. The said correction do not bear any signature as to by whom it was done. When it is compared with the Annexure P-2, which is said to be served to the petitioner the date of appearance is shown as 26.06.2013. The order-sheet of 26.02.2013 though records that the fresh notice be issued but the date was given on 28.02.2013 i.e. after a day. The original record contains a notice issued on 27.02.2013 bearing No.299@LVsuks@v0fu0v0@13 with an endorsement that the petitioners have refused to take the notice. Though the date was given in that was of 28.02.2013, but no order-sheet exists on 28.02.2013. Therefore, in the hierarchy of the administration, the way in which the notices are said to have been served raises a suspicion as to the authenticity of the same. The doubts get fortified especially when on 28.02.2013 no order-sheet by SDO was opened and instead the order-sheet exists of 26.04.2013, which records the fact of issuance of notice to the petitioner again. Therefore, the S.D.O. on 26.04.2013 was of the view that notice to show cause has not yet been served. The entire conduct of the SDO,

therefore, raises a serious ambiguity about the manner the case was handled.

7. The subsequent order-sheet dated 03.06.2013 records that the petitioner was proceeded ex-parte and the case was fixed for orders on 22.06.2013. The order-sheet of 22.06.2013 records that the order was ready & attached and be issued to the respective party but the entire case file do not contain any such order of 22.06.2013, instead communication of the order was made by dated 24.06.2013 which is at the last page of the file which is also filed by the petitioner as Annexure P-3 is on record.

8. Therefore, in absence of the order in file would lead to presume that no orders were actually passed on 22.06.2013. If the order dated 22.06.2013 was kept in the private records maintained by the authority, then it cannot take the effect. The official actions needs to be transparent and beyond all suspicion. The cancelation of supply of mid day meal, to the petitioner certainly takes away the right of the petitioner. Therefore, the decision making process of the State should stand the test of non-bias and should reflect that proper hearing was given to the aggrieved. Consequently, after it the perusal of the record reflects that no order was actually passed on 22.06.2013 and only the communication was made on 24.06.2013. Furthermore, the manner in which the ex-parte proceeding was drawn on 03.06.2013 also cannot be sustained merely on the basis of recording of fact that the petitioners had earlier refused to take the notice. The respondent authorities though projected that hearing was given to the petitioner before any right of the petitioner was taken away, actual hearing should have been given for it.

9. Therefore, the order dated 26.04.2013 was passed without any hearing that too by manipulation of the dates, consequently, the same cannot be sustained. In a result, the subsequent orders which were the basis of the order also cannot be sustained. In a result, the orders dated 10.11.2017, 28.03.2014 and 24.06.2013 are set aside. Since the matter relates to mid day meal and abrupt stoppage may cause deprivation of food to the children. In the facts of the case, it is directed that the State authorities shall make temporary arrangement for supply of mid day meal either through respondent No.5 Jay Maa Gayatri Mahila Swa Sahayata Samuh,Village Changori or any other society to continue the same for a further period of 45 days and the S.D.O. after hearing the parties shall pass an order afresh within a period of 45 days from the date of receipt of this order.