
(1991) 01 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 7423 of 1990

Ram Naresh Trivedi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-1991

Acts Referred:

Citation : (1991) 01 PAT CK 0003

Final Decision : Dismissed

Judgement

S.B. Sanyal, J.—The petitioner, who is the Chairman, Bihar School Examination Board (hereinafter referred to as the "Board") seeks quashing of an order dated 20.11.1990 issued by respondent No. 2 (Annexure-2), by which, the petitioner has been removed from the post on the ground that the petitioner had been functioning in a manner which had prejudicially affected the interest of the Board and was against public interest.

2. The petitioner was appointed u/s 4 of the Bihar School Examination Board Act, 1952 Bihar Act 7 of 1992) for a term of office for three years. He joined the post on 4.1.1989, but the notification of appointment was published in the official Gazette on 29.3.1989. He claims to have been functioning quite efficiently and satisfactorily. The removal of a Chairman is as postulated u/s 4-A of the Act. It is said that there has been a complete violation of the Proviso to Section 4-A(3) since the petitioner has been removed from the post of Chairman of the Board without any notification in the official Gazette as also by not giving him reasonable opportunity to show cause why he should not be removed.

3. The petitioner has also alleged mala fide against the acting and dealing of one Sri Rajesh Ranjan, a Member of the Bihar Legislative Assembly, who had threatened him for his administrative lapses and had also abused him and surrounded the Board Office with his gunmen. This matter was also published in the daily newspaper on 20.11.1990, including the Nav Bharat Times. It is further alleged that Sri Rajesh Ranjan is very close to the Chief Minister and the order of his removal was politically motivated and has been passed in haste and is

vitiated by mala fide. The only folly of the petitioner is that he did not allow himself to be pressurized by the aforesaid member of the Bihar Legislative Assembly.

4. Counter-affidavit has been filed on behalf of respondents 1 and 2 and it has been sworn by the Additional Commissioner, Department of Human Resources and Development, Govt. of Bihar. It is said that serious allegations were brought against the Board, which were subject-matter of criticism through public media with respect to the mal-functioning and mal-administration of the Board, leakage of question papers, favoritism to the students by changing their centres of examination and awarding excessive marks, particularly to the student whom the petitioner has admitted to be his relation. The petitioner was provided with opportunity to show cause as required u/s 4-A, proviso of the Act, which has been marked as Annexure "A". The petitioner, on receipt of the show-cause notice, submitted his explanation (marked Annexure-"B"). On receipt of the show-cause and the explanation given by the petitioner, the matter was gone into by the Secretary, Education Department, Government of Bihar, who submitted his report (Annexure "C") to the Chief Secretary, Government of Bihar. The Chief Secretary agreed with the recommendations of the Secretary, Education Department. The matter was thereafter placed before the Chief Minister for his approval and the impugned order (Annexure-"2") has been passed.

It has also been stated that the mal-functioning of the Board's Examination Wing came to the notice of this Court more than once. In C.W.J.C. No. 2119 of 1990 and its analogous case, there appeared to be serious differences between the Chairman and the Secretary of the Board, on the one hand, and the Vigilance Officer of the Board, on the other hand. The State Government had also referred the functioning of the Board to a Committee constituted of Hon'ble Mr. Justice S. Narain and Mr. N. K. Sinha and the report of the Committee was directed to be placed before this Court in the said writ petitions, which is apparent from the order dated 30.4.1990 passed in the said two cases (Annexure D-1). In C.W.J.C. No. 6651 of 1989, it was brought to the notice of this Court that the question papers of Hindi and Economics were found being sold in Hlisa Bazar a week before the Examination in those papers, but the Board allowed the students to appear in all the centres. But after sometime, the Board cancelled the examinations in those papers of the examinees of Nalanda District alone by recalling its earlier decision to cancel the examinations of those papers of all the centres. The mal-administration of the Board was manifested not only on account of leakage of question papers from time to time in different centres, but the allegation went as far as to say that students not appearing in the Secondary Education at all have secured first, second or high position in the said examination. There were allegations that the computer was fed with wrong facts in order to benefit some candidates to the detriment (sic) of others. Financial irregularities were also alleged against the Board. In short, the allegations were such which called for super session of the Board. This Court by its order dated

9.11.1959 in C.W.J.C. No. 6651 of 1989 concluded as hereunder:

It appears from the allegations that all is not well in the Bihar School Examination Board. It needs cleansing and requires to be streamlined. We find that the Government was pleased to appoint the Divisional Commissioner, Patna, to enquire into the affairs of the Board by Notification No. 176 dated 8.3.1988. It further appears that some more matters have been referred to the said one-man Committee on 16th of August, 1989, asking him to report within two months regarding the matters referred to him.

Ultimately, this Court waited for the inquiry report and directed the Board to strictly peruse its working in accordance with the Act, Rules and Regulations and there should be regular meeting of the Board as envisaged under the Act (vide Annexure-D).

5. A counter-affidavit has also been filed by the Board through its new Secretary. It is said that on removal of the petitioner from the post of Chairman, the respondent State has also appointed Sri Ram Raj Ram, Special Director, Secondary Education, Bihar, Patna, as the Chairman of the Board by the notification, dated 23.11.1990, who has already joined the post on the forenoon of the 24th November, 1990, and is since then functioning as the chairman and discharging all the official responsibilities of the Board. It has been further stated that the removal of the petitioner has been arrived at on its own merit without being influenced by any person whomsoever and after fully complying with the requirements of law. It has been also stated that the petitioner has suppressed material facts from this Court inasmuch as in M.J.C. No. 323 of 1990, a Bench of this Court observed:

Noticing the alarming situation and the fact that all efforts of this Court to bring some semblance of discipline between the petitioner, on the one hand, and the respondent No. 2, on the other hand, have failed, this Court called upon the learned Advocate General who is present in Court. Having heard learned Advocate General, we are of the view that the affairs in the Examination Board require immediate attention of the State Government in the appropriate Department in the interest, of the administration of the Examination Board as well as the larger interest of the public and students in particular who are likely to appear in the ensuing examination. For the said reason alone, we direct the Secretary, Department of Human Resources and Development, to forthwith obtain necessary orders from the Minister incharge of the Department in the matter concerning the ensuing examination, in particular the leakage of question papers, as alleged, and if necessary, to institute enquiry into the matter at the highest level and to restrain or make alternative with or without the Chairman, Bihar School Examination Board for holding the ensuing examination, if necessary.

It has also been averred that the inquiry committees are enquiring into the matter of the Board's functioning; one by Mr. N.K. Saha, the then Additional

Secretary, who has submitted some report about the real-administration of the Board and the other inquiry has been entrusted to Mr. Justice Section Narain, an ex-Judge of the Patna High Court who is making a thorough inquiry about the affairs of the Board.

6. At the outset, I must observe that the petitioner has not come forward with clear hands, inasmuch as in paragraph 9 of the writ application, he has made statement which is said to be true to his knowledge, that he has never been served with any show cause notice against the grounds for his removal in the notification under challenge. This is clearly a misstatement to mislead this Court from a high damnatory like the petitioner. Learned Counsel for the petitioner has tried to get away with the point by arguing "hat the principles of natural justice demanded not only service of a show-cause notice and filing of an explanation in reply thereto, but the State Government was duty bound to give him a personal hearing as also examination and cross-examination of witnesses.

Our attention has also been drawn to the actual import of the words "reasonable opportunity" by relying upon the decision of the Supreme Court in the case of *Town Area Committee v. Jagdish Pel. and Ors.* (1978) UJ (SC) 359 . Strong reliance has also been placed on the case of *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, to the effect that once an order is passed without affording an opportunity of being heard, the order ensuing civil consequences has to be struck down. Any post-decisional opportunity of hearing does not subserve the rules of natural justice, since, the authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. Reliance by the learned Counsel for the petitioner on the aforesaid two cases are completely misplaced. In the case of *Town Area Committee (supra)* in the context of the notification dated 19.3.1947, where no opportunity of any kind was provided to the petitioner who was removed from service, the Court held he was entitled to reasonable opportunity in a departmental proceeding in consonance with the principles of natural justice. In the case of *H.L. Trehan (supra)*, the Supreme Court came to conclude that before the impugned circular affecting the condition of service was issued, "the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular..." In the instant case, however, the petitioner was served with show-cause notice with various charges indicating the inability on the part of the Chairman to discharge responsibilities as enjoined to the said high office and various failures which have prejudicially affected the functioning of the Board and the petitioner has given detailed explanation to those charges, The State Government on consideration of the said charges concluded that the petitioner is unable to act and/or has acted in a manner which the State Government considered to be prejudicial in the public interest.

7. In the case of departmental inquiry, "reasonable opportunity" may mean a full-dress inquiry, examination of witnesses, right to the individual to cross-examine

the witnesses, oral hearing as contemplated in an inquiry held under Article 311 of the Constitution of India or other kind of domestic/departmental proceeding.

8. The only thing the State Government was required to be satisfied in the instant case was not the personal omission and commission of the petitioner, but his ability to shoulder the responsibilities of the high office and to run the institution and/or his action prejudicially affected the interest of the Board. Our attention has been drawn to the orders of this Court wherefrom it appears that the petitioner had grave differences with the Vigilance Officer and other staff of the institution. There has been allegation of leakages of the question papers, allegation of students not appearing in the examination securing high positions, so on and so forth. The petitioner might not be directly responsible for all these happenings, but was required to discharge the heavy responsibility of the office in an able manner so that such grave and serious allegations were not levelled against the Board as to shake the confidence in the institution.

9. Whether the principle of natural justice has been violated or not has to be adjudged in the background of the nature of charges, nature of investigation conducted, statutory or relevant rules governing such inquiry, as also the question has to be judged in the light of facts and circumstances of each case. The basic requirement is that there must be a fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and the reasons. The rules of natural justice are flexible and cannot be put on in any rigid formula. It has been held in the case of *K.L. Tripathi Vs. State Bank of India and Others*, as follows:

Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi-judicial adjudication.

10. To the same effect is the observation of the Supreme Court in the case of *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, where it was held as follows:

It is well established that rules of natural justice are not rigid, they are flexible and their application depends upon the setting and the background of the statutory provision, nature of the right which may be effected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations...nor can the *audi altnm partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or urgency of taking action so demands, as pointed out in *Maneka Gandhi's case* AIR 1978 SC 597.

I am, therefore, satisfied that the State Government has taken the impugned decision on objective consideration of the show cause filed by the petitioner and his explanation and the fast deteriorating condition of the Board more than once pointed out by his Court, to sustain the confidence of the public in the institution.

11. So far as, the question of mala fide is concerned, the persons against whom

mala fide has been alleged, having not been impleaded as party respondents. I am, therefore, unable to entertain the said plea. It is rightly said that it is easy to allege mala fide, but it is difficult to prove it.

12. As far, as the question of inoperativeness of the impugned order contained in Annexure-2 because of no notification having been published in the official Gazette, it has been rightly pointed out that the petitioner joined the post of Chairman on 4.1.1989, without publication of his appointment in the official Gazette, which was done only on 29.3.1989 (vide Annexure-C/3). From the impugned order (Annexure-2), it appears that a copy of the impugned resolution was forwarded for its publication in the official Gazette, Gulzarbagh, Patna. It is nobody's case that it has not been published even though the petitioner has filed a reply to the counter-affidavit filed on behalf of the respondents 1 and 2.

13. The next point urged on behalf of the learned Counsel for the petitioner is that the impugned order contained in Annexure-2 is not a speaking order. It has only recorded an opinion that the Chairman of the Board has been functioning in a manner which has prejudicially affected the interest of the Board and, therefore, his continuance as the Chairman of the Board is not in public interest, requiring his removal under the Proviso to Section 9-A of the Act. What the learned Counsel actually contends is that the impugned order (Annexure-2) should have been prefaced with consideration of his show cause reply to the charges levelled against him and its rejection. It appears from the counter-affidavit of Respondent Nos. 1 and 2 that charges were levelled against him (vide Annexure "A" and series). The petitioner submitted his show cause reply on 19th July, 1990. The Secretary, Education Department, Government of Bihar, considered the charge, reply of the petitioner and recorded opinion serially and concluded that the charges stand proved by giving detailed reasons (Annexure-B). Thereafter the matter was placed before the Chief Secretary (Annexure-C), who on detailed consideration, concluded that the removal of the petitioner be placed before the Chief Minister for orders, whereafter the impugned order contained in Annexure-2 was passed on approval by the Chief Minister. The opening words of the impugned Annexure-2 state that the State Government has concluded that the Chairman has been acting in a manner prejudicially affecting the interest of the Board. If Annexure-2 is read along with Annexures "A", "B" and "C" of the counter-affidavit, it cannot be said that the State Government has acted arbitrarily and not in an objective manner and/or there has been any abuse of power at adjudicatory or procedural level. The reasons are writ large in the remarks column, where charges and the explanation of the petitioner have been considered and conclusions arrived at. The process of reasoning is discernible when Annexure-2 is read in the background referred to above. The respondents have not tried to support Annexure-2 by giving reasons in the counter-affidavit, but they have simply drawn the attention of the court to the reasons arrived at for the conclusion by competent officers of the State Government resulting in the issuance of Annexure-2. Learned Counsel for the petitioner, when faced with the papers giving out detailed reasons for rejection of the show cause of the

petitioner, submitted that the petitioner, ought to have been given opportunity to examine witnesses in support of his defence in view of the decision contained in Town Area Committee's case (supra). I have already rejected the submission of the learned Counsel for the petitioner on this score. I am, therefore, of the opinion that in the facts and circumstances of this case, the impugned order is not vitiated by violation of any principles of natural justice.

14. The last submission of the learned Counsel for the petitioner is that the petitioner's post was tenure post for a period of three years, his tenure cannot be terminated in the midst. In support of this submission, learned Counsel has relied upon the case of Dr. Braj Kishore Giri v. State of Bihar in C.W.J.C. No. 198 of 1990, decided by a Bench of this Court on 23rd of March, 1990. Section 4-A of the Act postulates removal of a Chairman. Removal itself connotes that it could be so done within the period of tenure, as otherwise termination will be brought about by efflux of tenure. It is well-established in service law that a person on tenure post can be dismissed and removed as the tenure is not a carte-blanche for all kinds of contumacies, misdeeds and failures. Dr. Braj Kishore Giri's case is of no help to the petitioner inasmuch as that case, instead of removing of Brij Kishore Giri, the Secretary of the Board under the Proviso to Section 9-A, he was transferred to some other post in the midst of his tenure, and in that background, this Court held that once a person is appointed as the Secretary of the Board, he shall as laid down by the Act and the Rules, hold office for three years, unless he is removed or he reaches the age of superannuation. The instant case being a case of removal from the post of Chairman of the Board, the said decision does not come to the rescue of the petitioner.

15. In the result, this writ petition is dismissed, but there will be no order as to costs.

Aftab Alam, J.

I agree.