
(2007) 09 PAT CK 0101
In the Patna High Court

Sandeep Kumar Bhagat and Another APPELLANT
Vs
C.M.D. BSNL and Others RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13

Citation : AIR 2007 Patna 180 : (2008) 1 PLJR 557

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—I.A. No. 1086 of 2006 has been filed on behalf of Ram Bilash Sharma, the then Planning Officer, BSNL, Munger.

2. In my view intervention petition is wholly misconceived and is dismissed as such. If the intervenor has any grievance against the respondents, he is at liberty to file a substantive independent writ application. Intervention to support the writ petition is not permissible.

3. Thus, I. A. No. 1086 of 2006 is dismissed accordingly.

4. Heard.

5. The petitioners are approved contractors of Central Government, BSNL, Public Sector undertaking etc. They had several contracts with BSNL, who are party respondents in this writ petition and have appeared. It appears that upon suo motu direction of Superintendent of Police. CBI/A. C. B., Patna, a crime was registered against some BSNL officers along with the petitioners under Sections 120B and 420 IPC and, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. On the said crime being registered by CBI, premises of the petitioners and those of the BSNL officers and BSNL offices were raided. Investigations were carried out. Nothing re-portable was found. Accordingly, the Superintendent of Police. CBI/A. C. B. Patna, submitted final

form before the Special Judge, CBI, Patna, vide his memo No. 4987, dated 30-9-2005. It was requested that the same be accepted and necessary orders passed and permission be granted to CBI to return the documents to the department. The Special Judge, CBI, Patna, where Special Case No. 2/2000 was registered, by its order dated 20-10-2005 accepted the final form as submitted by the Superintendent of Police. CBI/ A. C. B. Patna. This would clearly establish that notwithstanding the investigation taken up by CBI suo motu nothing amounting to a criminal offence was at all found, much less, against the petitioners.

6. Once the Court accepted the final form and closed the matter regrettably the same Superintendent of Police, CBI/A. C. B., Patna becomes active and writes to Telecom Divisional Manager, BSNL, Munger within whose jurisdiction investigation was done clearly stating that Case No. R. C. 2(A) / 2005 was registered by CBI suo motu against various persons including the petitioners and after the finalization of the investigation besides other proposed action against public servants following recommendations were made against the firm of the petitioners, which recommendation clearly amounts to banning of the business. Curiously he does not mention that the investigation yielded no criminal offence and the criminal proceedings were closed at his own instance. To say the least, this Court finds this curious and unexplainable. Once CBI found nothing to report and prosecute and requested the Court itself to close the case then on what jurisdiction CBI has to act as advisor of BSNL and advise them for not doing business with the petitioners' firm specially when they could not lay hand of any corrupt practice.

7. Acting on such a recommendation of C. B. I. which necessarily persuaded the authorities of the BSNL to take action not knowing that the case was closed, the bills of petitioners allegedly were withheld and this brought the petitioners to this Court.

8. BSNL has filed a counter affidavit not controverting the aforesaid facts but have stated that several discrepancies in petitioners' business with BSNL were found and as such a show cause notice was issued to the petitioners' firm vide BSNL letter dated 21-3-2006 (Annexure A to the counter affidavit). A reference to the said letter would immediately show that it was a notice for banning of business of the petitioners' firm and it had reference to the Vigilance Case as instituted by CBI. In the said show cause notice there were specific circumstances of alleged contractual breaches in different contacts

9. This counter affidavit having been filed, the petitioners then have filed the final order dated 15-7-2006 of the respondent - Telecom District Manager, Miunger, by which referring to the case aforesaid and the show cause notice aforesaid all that has been said is that a further time was requested for filing a reply, which was not to be granted and as such the firm of the petitioners and the petitioners are banned from doing business with the department with immediate effect. This order dated 15-7-2005 is now challenged.

10. Having heard learned Counsel for the parties, perused the affidavit and with their consent this writ petition is being disposed of at the stage of admission itself.

11. In my view though the facts aforesaid are eloquent to show that BSNL initiated the proceeding not in its own volition but under the direction of CBI and that too having not been informed by C. B. I. that the case was closed, by itself may vitiate the proceeding. The propriety and legality of the action of CBI is wholly questionable. The conduct remained unexplainable as on one hand they informed the criminal Court that they are clueless in the matter as no crime has been committed and on the other hand, immediately after the same is accepted by the Special Judge. CBI, Patna, the S.P.C. B. 1/ A.C.B. Patna on its own initiative advised BSNL as to their contractual obligation. It is better that CBI restricts itself within the law and conducts crime investigation and stop acting as an advisor in contractual matter, least it can be said that the interest of CBI extends beyond their statutory duty. This however, does not end the matter either way.

12. As matter now stands BSNL has issued a notice indicating proposed action and the allegation on which the action is to be based. Petitioners ought to have responded. They sought time. Time was refused. Even then BSNL was obliged in law to give a reasoned order even though the said order was an ex parte order. What it has done by the impugned order dated 15-7-2006 (Annexure 6) is that it has merely quoted the show cause and held that there being no response the petitioners' firm was banned from further business with BSNL. To my mind, such an order cannot be sustained in law. It cannot be now disputed that the proceeding for black listing a person is in the nature of a quasi judicial proceeding. Rights of parties are involved and civil consequences follow: such an order has to be passed in consonance with the principle of natural justice and one of the well recognised fact of principle of natural justice is passing of speaking order. It matters little whether that order is passed on contest or ex parte. In either event it has to be a speaking order, By speaking order what is meant is that reasons in support of the order must be given. Reasons are the link between the facts found and the decision taken. It is this process of reasonings, that is to be tested in judicial review. If reasons or the like is missing then it is unreasoned order and unreasoned order is in violation of basic principle of natural justice and thus have to be avoided.

13. In the case of Mahindra & Mahindra Ltd. v. Union of India and Anr. since reported in AIR 1979 SC 798 the Apex Court had an occasion to examine an order passed by MRTP Commission. The order was an ex parte order where the company had refused to participate in the proceeding. The Apex Court found that the Commissioner had, in fact, applied its mind to the issues. It had struck down certain clauses as invalid but it had upheld certain clauses as valid. This clearly showed application of mind but still as no reason for striking down clauses was disclosed, the order of the Commission was set aside. The Apex Court in para 24

of the said report has clearly held that the charge that the order suffered from non application could not therefore, be sustained. But the order was clearly bad inasmuch as it did not disclose the reasons which weighed with the Commission in directing the appellant to cease and desist from the trade practices set out in the order. The order was a non speaking order. It consisted merely of bald direction given by the Commission and did not set out any reasons whatsoever why the Commission had decided to issue those directions. "It had a sphinx-like face, which goes ill with the judicial process." It is true that the order was ex parte order, but the ex parte character of the order did not absolve the Commission from the obligation to give reasons in support of the order.

14. In view of the aforesaid, for the reasons as noted in the judgment of the Apex Court. I have no option but to set aside the order of BSNL dated 15th July, 2006 (Annexure 6) and direct the petitioners to file their show cause and BSNL to consider the same and pass final order.

15. I may however, observe that BSNL will not take into account or would not be concerned with the letter sent to it by the Superintendent of Police, CBI/A. C. B. Patna, which as indicated above, was wholly unwarranted and beyond its jurisdiction.

16. With these observations and direction Annexure 6 is quashed and the writ petition is allowed.