

(2013) 03 PAT CK 0053

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13871 of 2012

Shivchandra Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2013) 03 PAT CK 0053

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Mritunjay Kumar and Mr. Niranjana Kumar, for the Appellant; Prabhat Kumar Sharan, AC to AAG-V, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—The prayer of the petitioner in this writ application reads as follows:-

1 (i) To quash the letter no.-967 dated 13.07.2012 (Annexure-10) issued by the District Magistrate, Samastipur whereby and whereunder the Block Development Officer, Tajpur has been directed to issue "Prapatra Ka" against the petitioner.

(ii) Further, to quash the letter no.-968 dated 13.07.12 issued by the District Magistrate, Samastipur (Annexure-11) whereby and whereunder the B.D.O. Tajpur has been directed to lodge/institute an F.I.R. against the petitioner and the Panchayat Secretary of the Panchayat.

(iii) Further, to stay the operation of impugned orders (Annexure-10 and 11) during final disposal of this writ application

Learned counsel for the petitioner has submitted that the petitioner was selected and appointed on the post of Panchayat Sevak on 22.4.1991 and having been posted at different places while he was working as a Panchayat Sevak in Gram Panchayat Raj Gauspur Sarsauna with additional charge of Gram Panchayat Raj

Bangara, that the District Magistrate, Samastipur had directed the Block Development Officer, Tajpur by his order dated 13.7.2012 to frame memo of charge and transmit the same through the Sub Divisional Officer, Samastipur on the basis of a complaint filed by one Sri Suresh Sah which was examined by Sri. Manoj Kumar, Senior Deputy Collector, Samastipur. It is this order of the District Magistrate, Samastipur dated 13.7.2012 (Annexure-10) which has been assailed along with the another order of the District Magistrate dated 13.7.2012 (Annexure-11) wherein a direction was issued for lodging a First Information Report against the Mukhia Suresh Rai and the petitioner, Panchayat Secretary for being party to purchasing of sub-standard solar light as also selecting and appointing one Kavita Kumari, the daughter of the Mukhia having 55.8% marks in presence of better qualified candidates, namely, Kumari Kamini having 60.33% marks and Nutan Kumari having 57.11% marks as well as non-disbursement of Rs. 5,69,334/- being the amount of grant towards subsidy on potato, maize, diesel and seedlings in the process of depriving the farmers.

2. According to the learned counsel for the petitioner, both the orders passed by the District Magistrate, Samastipur dated 13.7.2012, as contained in Annexure-10 & 11 to the writ application, are bad primarily on account of violation of natural justice. According to the learned counsel for the petitioner, the Collector of the district ought to have issued a show-cause notice to the petitioner before issuance of the chargesheet against the petitioner and similarly he ought to have also given an opportunity of hearing to the petitioner before taking his decision directing the Block Development Officer to lodge First Information Report against him (petitioner). Reliance in this regard has been placed on the judgment of the Apex Court in the case of Indian National Congress (I) Vs. Institute of Social Welfare and Others, with a special emphasis of paragraph nos. 24 & 25 of the aforesaid judgment. He has also referred to a few unreported judgments as contained in Annexure-12 series being orders dated 12.3.2012 in CWJC No. 3673 of 2012 (Hari Charan Das & Ors. Vs. The State of Bihar & Ors.), another order dated 23.2.2012 in CWJC No. 3642 of 2012 (Md. Jamaluddin & Ors. Vs. The State of Bihar & Ors.) and the order dated 31.1.2012 in CWJC No. 1796 of 2012 (Nirmala Devi & Ors. Vs. The State of Bihar & Ors.).

3. Learned counsel for the State on the other hand has submitted before framing of charge, a delinquent is not required to be given any notice and in fact only when a departmental proceeding commences that the delinquent get an opportunity to present his case initially by filing his written statement of defence and later on also adducing evidence before the enquiry officer. As with regard to the order of the District Magistrate, Samastipur containing direction for lodging of the First Information Report against the Mukhia and the petitioner, Panchayat Sevak, he has submitted that there is no requirement under any law that a First Information Report would be lodged against the public servant only after issuance of show-cause notice and/or extending opportunity of hearing.

4. In the considered opinion of this Court, the entire superstructure in the pleadings of the petitioner for challenging the two impugned orders contained in Annexure Nos. 10 & 11 respectively is itself based on no firm foundation. By the impugned order dated 13.7.2012, the District Magistrate, Samastipur had merely directed for preparation of a draft memo of charge and its being submitted through the Sub-divisional Officer, Samstipur, inasmuch as, the relevant portion whereof reads as follows:-

5. From a bare perusal of the aforesaid order of the District Magistrate dated 13.7.2012, it would be clear that when Suresh Sah, a public representative, had leveled certain allegations against the petitioner, a fact finding enquiry was conducted by Sri Manoj Kumar, a Senior Deputy Collector of Samastipur Collectorate and when he had found those allegations to be true against the petitioner, the copy of the fact finding enquiry report was sent to the Block Development Officer, being the immediate controlling authority of the post of Panchayat Secretary for preparation of a draft memo of charge and its submission through the Sub-Divisional Officer. It has to be noted that the disciplinary authority for the post of Panchayat Secretary is the Collector himself and, therefore, this exercise at best can be said to be the process of framing of memo of charge before its being issued by the disciplinary authority himself. For such recourse, the petitioner was never required to be heard because whatever has transpired in the fact finding enquiry against the petitioner has to be reduced in the form of a definite charge and, therefore, nothing adverse to the interest of the petitioner has been done while seeking a draft copy of the memo of charge. This internal communication in fact is also not capable of being described as a concluded order so as to vest a right to the petitioner to file a writ application against it.

6. Admittedly, the petitioner is governed by the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 wherein the procedure for imposing penalties has been provided under Part-V under the heading "Penalties and Disciplinary Authorities". Rule 14 lays down as to requirement for inflicting the minor and major penalties and Rule 15 defines the Disciplinary Authority. Rule 16 lays down the authority to institute proceedings and Rule 17 thereof provides for the procedure for imposing major penalties while Rule 19 envisages the procedure for imposing minor penalties. It has to be taken into consideration that for a post of Panchayat Sewak held by the petitioner, the Collector is a disciplinary authority and thus, when he had passed an order directing the Block Development Officer to frame a draft memo of charge, he had only desired that the direct reporting authority of the petitioner, namely, Block Development Officer to prepare a draft memo of charge which was to be forwarded to the Sub-divisional Officer for its being submitted to him (District Magistrate). Nowhere in the 2005 Rules, there is a provision for framing of charge against a delinquent only after giving a show-cause notice and/or opportunity of hearing. In this regard, it would be relevant to quote Rule 17(3) & (4), which reads as follows:-

17(3) Where the disciplinary authority himself holds the inquiry against a government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the government servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

7. Similarly, under Rule 19(1) laying down the procedure for imposing minor penalties, it has been provided that the concerned government servant would be intimated in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which such action is proposed to be taken against him. Thus, for the purpose of issuance of memo of charge either for the major penalty or the minor penalty under the 2005 Rules, there is no requirement of issuance of prior show-cause notice.

8. As noted above, the District Magistrate, Samastipur having received the allegation against the petitioner had got it examined by a Senior Deputy Collector by way of fact finding enquiry which in service jurisprudence is known as Preliminary Enquiry. Such Preliminary Enquiry is not governed by the provision of Article 311 of the Constitution of India as was laid by the Apex Court in the case of Shri A.G. Benjamin Vs. Union of India reported in 1967 SLR 185. In fact when a Preliminary Enquiry is held for framing the charge, it cannot be held to be irregular on account of its being in violation of principle of natural justice, inasmuch as, depending on the result of such fact finding or Preliminary Enquiry, the disciplinary authority has to himself take an action where the principle of natural justice has to be complied with at the stage of conducting the regular disciplinary proceeding. In fact, issuance of charge-sheet in a departmental proceeding is the beginning point of the disciplinary proceeding and a formal charge-sheet is to be issued in terms of the provision of service rules and it has to be communicated to the government servant with the intimation that a formal Disciplinary Enquiry has been initiated against him on those charges. Reference

in this connection may be usefully made to the judgment of the Apex Court in the case of S. Pratap Singh Vs. The State of Punjab, .

9. As noted above, such a formal charge-sheet is yet to be drawn against the petitioner and, therefore, this Court will have no difficulty in holding that neither in the service jurisprudence nor under the disciplinary rule by which the petitioner is governed requires issuance of a show-cause notice even before framing and service of charge-sheet. This Court, therefore, does not find any merit in the challenge of the petitioner to the order of the District Magistrate contained in Annexure-10 directing the Block Development Officer to only frame a draft memo of charge on the basis of fact finding report and submit it to him through the Sub-divisional Officer.

10. The reliance placed by the learned counsel for the petitioner on the judgment of the Apex Court in the case of Indian National Congress (supra) is also wholly misconceived, inasmuch as, that case was in relation to the cancellation of registration of political party and, therefore, whatever was said therein would not govern the cases arising out of the disciplinary proceeding. Paragraph no. 24 & 25 of the judgment on which much stress was given by the learned counsel for the petitioner in fact only explains as to what act of statutory authority would be a quasi judicial act. This Court, therefore, does not find any relevance of the aforesaid judgment in the background of the facts of the present case.

11. As with regard to the unreported orders of this Court in the case of Haricharan Das (supra), this Court must indicate that the same was not in relation to issuance of a memo of charge in a disciplinary proceeding and in fact in that writ application, an order of the District Magistrate had been passed for making recovery from the Panchayat Secretary for violating the guidelines of purchase of solar lights. No such order of recovery in the present case has been passed and, therefore, whatever has been said in the said order by this Court including of Haricharan Das (supra) or in the case of Md. Jamaluddin (supra) or even in the case of Nirmala Devi (supra) must be left confined to the facts of those cases. Infact it is well settled that recovery of any amount from a government servant being a punitive action as also one of the punishment provided under 2005 Rules, no order of recovery can be passed without initiating a proceeding as laid down in the rules. In the present case, no recovery is sought to be made from the petitioner under either of the two impugned orders. The first order (Annexure-10) only directs for preparation of a draft memo of charge and the second order (Annexure-11), which this Court shall immediately deal in the subsequent paragraphs, also does not direct from making any recovery from the petitioner.

12. In the second letter of the District Magistrate of the even date i.e. 13.7.2012 (Annexure-11), a direction was issued for lodging First Information Report both against the Mukhia and the petitioner in capacity of Panchayat Secretary. This order on the part of the District Magistrate for initiating a criminal proceeding and institution of First Information Report u/s 154 Cr.P.C. does not require

issuance of show-cause notice and/or giving opportunity of hearing. As a matter of fact, in the said order of the District Magistrate, it was directed as follows:-

13. If the District Magistrate had noticed that both the Mukhia and the petitioner being the Panchayat Secretary had violated the norms laid down for installing of solar light and the purchases were made contrary to the Government guidelines leading to substandard supply of solar light, the resultant loss to the Government exchequer on account of such purchase could definitely be made subject matter of a criminal case. Similarly, if more meritorious candidates were ignored in process of selection and appointment of a Panchayat Teacher for favouring the daughter of the Mukhia, it cannot be said that the direction of the District Magistrate to lodge First Information Report was bad on fact or in law. If the Government grant by way of subsidies was not released for its being distributed to the farmers, neither the Mukhia nor the Panchayat Secretary could be absolved in the matter and, therefore, if a criminal action was sought to be initiated against the petitioner, the Panchayat Secretary in view of his being direct representative of the Government to monitor the affairs of the Gram Panchayat, no anomaly can be said to have been committed by the District Magistrate in launching the criminal prosecution both against the Mukhia and the Panchayat Secretary.

14. As a matter of fact, the only challenge to the order of the Collector directing institution of First Information Report both against the Mukhia and the Panchayat Secretary, the petitioner is based on violation of principle of natural justice and this Court does not find anywhere in the service rules or in Section 154 of the Cr.P.C. that a First Information Report has to be lodged against a government servant only after issuing a show-cause notice and/or extending opportunity of hearing to the accused persons. That being so, this Court does not find any error in either of the two impugned orders as contained in Annexure Nos. 10 & 11 respectively. Consequently it has to be also held that this writ application is wholly misconceived and the same is, accordingly, dismissed.