
(2007) 09 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 7499/05

Smt. Kamlawati Devi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 PLJR 17

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The petitioner has challenged the order of the District Magistrate, West Champaran, Bettiah, dated 28.4.2005, by which the services of the petitioners, who were selected as Angan Bari Sewika/ Sahayika have been cancelled and the Mukhiya of Bagaha Prakhanda has been asked to convene a meeting afresh and make a fresh selection.

2. In spite of repeated adjournments, State has filed no counter affidavit. It was earlier ordered that if no counter affidavit is filed by the next date the writ petition will be taken up and disposed of on the basis of averments available on records.

3. Heard the parties and with their consent this writ petition is being disposed of at the stage of admission itself.

4. Learned counsel for the State submits that against the order passed by the Collector there is a provision of an appeal in terms of clause 11 of the guidelines for appointment of Angan Bari Sewika, 2006. He refers to clause (a) and submits that the Collector has been conferred authority to enquire into the irregularity in appointment and the authority to get the matter investigated and enquired into.

5. From the impugned order (Annexure 3/1) it is apparent that the Collector

received some complaints and ordered the Sub-Divisional Officer to conduct an enquiry. The report having been submitted, he ordered for cancellation of all appointments made and directed that fresh appointments should be made. This order does not disclose who complained, what was the nature of complaint, what was the enquiry report submitted by the Sub-Divisional Officer, what irregularities were found and why he considered the irregularity violating the appointments. In other words, the order is a non-speaking order, bureaucratic order. Even if it be assumed that from an order an appeal lie, it is well settled that against a non-speaking order no appeal lie.

6. It has been settled by decisions over the last five decades by the Apex Court as to what is the speaking order. Firstly, speaking order is an order, which effects the rights of a party or which has civil consequences, has to be a speaking order and such an order is amenable to judicial review. Speaking order is an order which discloses the reasons for that decision. What is reason has already been decided by the Apex Court a number of times. Reasons link between facts found and decision taken. Kindly refer Union of India (UOI) Vs. Mohan Lal Capoor and Others, and in particular para 28 thereof.

7. In the present case there is no reason at all ascribed. It is supposed to be a speaking order but it is not such an order, then the order is vitiated as a matter of law and is in violation of principle of natural justice. An order, which is in violation of principles of natural justice need not be appealed against but can be set aside by this court in exercise of power under Article 226 of the Constitution by issuing a writ of certiorari at the very initial, stage itself. The plea of alternative remedy is not available against an order, which has been passed in violation of principle of natural justice. Speaking order is a facet of principle of natural justice.

8. I may add as has been held in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, the necessity to give reason apart from being it deals with the rights of the parties but that part the said order, as State has submitted, is appealable. If no reason is given what the appellate authority would consider? The Apex Court noticed these situations and held that it had occasion to protest against the practice of the executive in this regard where matters were decided without giving reasons, which was a negation of rule of law. If reasons are given, as held by the Apex Court, then it would ensure that the decision is reached according to law and not as a result of caprice, whim or fancy or reached on ground of policy or expediency. A party to the dispute is ordinarily entitled to know the reasons on which the authority has taken action against him. If the order is subject to appeal the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained the relevant law was correctly applied and the decision was just.

9. For the reasons aforesaid I have no option but to set aside the impugned order dated 28.4.2005 passed by the District Magistrate, West Champaran,

Bettiah with a liberty to the Collector to issue notice to the parties concerned, whose selection was to be set aside and disclose to them the report received by him and then after considering all the materials pass a speaking order, as he may deem fit. This application is accordingly allowed.