
(1983) 09 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1479 of 1980

Toesh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1983

Acts Referred:

Companies Act, 1956 — Section 314

Citation : (1984) PLJR 341

Hon'ble Judges : S. Sarwar Ali, Acting C.J.; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Basudeva Prasad, Parmeshwar Prasad Sinha and Arun Bihari Mathur, for the Appellant; Balabhadra Prasad Singh and Jaya Nandan Singh, for the Respondent

Judgement

Lalit Mohan Sharma, J.—By order dated 9.4.1980, as contained in Annexure 8, the petitioner, who is an Assistant Godown Manager, working under the Bihar State Food and Civil Supplies Corporation Ltd. (herein-after referred to as "the Corporation") has been suspended, as directed by its Managing Director (Respondent No. 2). The petitioner has challenged it on the ground that the respondent No. 2 has no authority to do so and that the impugned order is also bad as no disciplinary proceeding has been started against him. The petitioner was appointed as a Government servant under the State of Bihar. His services were transferred to the Corporation which he joined as on deputation. He was incharge of certain godown and, according to the case of the respondents, he misused his office. In the writ petition, the petitioner has asserted that he is absolutely innocent. In view of the limited scope of the present case, it is not necessary to go into the details of the allegations and counter allegations.

2. It has been stated in the counter affidavit that the State Government has delegated the power to start a disciplinary proceeding and to suspend officers on deputation to the Managing Director of the Corporation, as per letter dated 26.5.76 (Annexure C) who is its Chief Executive Officer, and the Managing

Director (Respondent No. 2) after being satisfied that a serious illegality has been committed by the petitioner has put him under suspension as an interim measure in contemplation of a disciplinary proceeding. A decision to commence a criminal proceeding as also a departmental proceeding against the petitioner was taken and the matter has been referred to the police. It is further said that in accordance with the decision, a disciplinary proceeding has also been initiated and charges were served on the petitioner which he refused to receive.

3. So far as the question whether a disciplinary proceeding has been started against the petitioner or not, the statement in the counter affidavit of the respondent No. 3 who is the Chief of Vigilance of the Corporation is relevant. He has asserted that a proceeding had been initiated and charges were framed and an Inquiry Officer was appointed. It is further said in paragraph 14 of the counter affidavit that a copy of the charges was sent to Bihar Sharif for being served on the petitioner, but the latter refused to receive the copy in the evening of 26.6.80. A fresh attempt was made to serve on the next date when the petitioner attended the office, but he again refused to accept it. A report to that effect addressed to the District Manager, Nalanda, and a copy of the charges framed have been annexed as annexures to the counter affidavit. After hearing learned counsel for the parties and going through the various affidavits, I am satisfied that the case of the respondents in this regard is correct.

4. Mr. Basudeva Prasad, appearing in support of the application, contended that the power to suspend is vested in the appointing authority, as was observed in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, and since the petitioner was appointed by the State Government and is a State employee, the Managing Director of the Corporation has no jurisdiction to pass the impugned order.

5. Referring to Rule 4 of the Bihar Service Code dealing with the delegation of power in this regard, it has been argued that since the respondent No. 2 is not an authority subordinate to the State of Bihar, the power cannot be delegated to him and the instruction as contained in Annexure C being administrative in nature and contrary to rule 4 is ultra vires. The rule 4 reads as follows:

4(a)-Any power which is expressed in these rules as residing in the State Government may, after consultation with the Finance Department, be delegated to any subordinate authority to such extent and subject to such conditions as the State Government may determine.

6. On the question as to whether the Managing Director of the Corporation is subordinate or not, the parties did not produce relevant materials before the hearing of the case was taken up. During the argument, the learned counsel appreciated the importance of the point and filed further affidavits along with the Memorandum of Association and Articles of Association of the Corporation. The Corporation was incorporated as a private limited company under the Companies Act, 1956 and has been described as a Bihar Government Undertaking. One of the main objects, as stated, is to act as the agents of the

Government of Bihar in the matter of procurement and distribution of food grains. All the shares of the respondent company are admittedly allotted to the Governor of Bihar, Food Commissioner, Government of Bihar and respondent No. 2. Article 74(b)(1) of the Articles of Association lays down that the Chairman-cum-Managing Director shall be appointed by the Governor and subject to the provisions of section 314 of the Companies Act, the additional remuneration may be fixed by the Governor. The appointment of Chief Executive Officer is to be made in consultation with a Committee constituted of the Chief Secretary, Development Commissioner and Resources Commissioner of the State Government. Under article 74(c) the Governor may determine the period for which the Chairman-cum-Managing Director has to hold office and under article 74(d) the Governor has power to remove him. The Governor has been given authority to determine the number of Directors of the company and it is provided that the number of Non-Official Directors shall not exceed 1/3rd of the total number of Directors. The first Directors of the Company are all official members including the Food Commissioner, Finance Commissioner, Agricultural Production Commissioner, Industrial Development Commissioner and the Commissioners of all the divisions. These provisions indicate that the Corporation is under the full control of the State Government. The report of the Auditors on the accounts of the Corporation, annexed as Annexure "BB" to the supplementary affidavit of the respondents 2 and 3, also confirms this view. The respondents have also relied upon the report of the Comptroller and Auditor General of India, Annexure "CC". A very vital provision relevant to this point is to be found in article 134 which is in the following terms and gives power to the Governor to issue directions in regard to the conduct of the day to day business of the Corporation and to modify and reverse any direction:

Notwithstanding anything contained in any of these articles or the rules made thereunder, the Governor may, from time to time, issue such directions as he may consider necessary in regard to the conduct of the business of the Company or of the Board of Directors thereof and in like manner may vary and annul any such directions. The directors shall give immediate effect to the directions so issued.

Mr. Basudeva Prasad relied on the decision in Mahadev Prasad Roy Vs. S.N. Chatterjee and Others, and urged that the word "subordinate" must be construed to mean subordination in rank. In that case, the petitioner who had been appointed by the Superintendent of Government Press, was dismissed by the Deputy Superintendent and the order of his dismissal was challenged on the ground that the Deputy Superintendent being subordinate to the Superintendent was not authorised to pass the order. On behalf of the State, the reply was that since the powers of appointment and dismissal of the staff were delegated to the Deputy Superintendent, he should not be treated as subordinate to the Superintendent and his authority should be deemed to be co-extensive with that of the Superintendent. The High Court rejected the argument addressed on behalf of the State that for deciding the controversy, the powers and duties

conferred on the concerned officers should be looked into and not their rank. The observations relied on by Mr. Prasad having been made in that back, ground are not relevant in the present case. The High Court gave a wider meaning to the word rather than a narrow one and refused to exclude the Deputy Superintendent merely on the ground that he was exercising functions similar to those of the Superintendent. The word "subordinate" may be referable to rank but that is not the only meaning permissible to be given to the expression.

7. The word "subordinate" is not a term of art and in its dictionary meaning, it connotes several ideas including holding of secondary or subservient position. The intention of rule 4 is to give a wide meaning to the expression "subordinate authority" otherwise the framer of the rule would have mentioned a Government officer or servant in place of "authority". The issuance of the power of delegation under Annexure C also indicates that the State Government has interpreted the rule 4 in this light. The provisions in the Articles of Association specially article 134, to my mind, give a strong indication that the respondent No. 2 is an "authority" subordinate to the State Government within the meaning of article 4. It follows that the impugned order was validly passed and the disciplinary proceeding against the petitioner was lawfully commenced. Since both the points urged on behalf of the petitioner have to be rejected, the writ application is dismissed, but in the circumstances without costs.