
(1999) 05 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 3972 of 1998

Triloki Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Citation : (1999) 2 BLJR 1514

Hon'ble Judges : Ashok Kumar Ganguly, J

Bench : Single Bench

Judgement

Ashok Kumar Ganguly, J.—The petitioner claims that he was appointed as Assistant Godown Manager in the Bihar State Food and Civil Supplies Corporation Limited (hereinafter called the said Corporation) on 5.6.1981 and was posted at different godowns. It is also the case of the petitioner that at the relevant time between 23.2.1986 and 31.12.1987 the petitioner was made godown incharge of Katra godown at Patna City. The petitioner's case as made out in the writ petition is that the Department of Food and Civil Supplies, Government of Bihar, Patna used to make allotment of the stock of palm oil and rapeseed oil to the said Corporation obtainable from the State Trading Corporation of India (S.T.C.) and thereafter they were distributed to the various districts of the State on getting allotment from the respondent No. 1, the Secretary-cum-Commissioner, Department of Food and Civil Supplies, Government of Bihar, Patna. It is also the case of the petitioner that the said Corporation used to make requisition from the State Trading Corporation of India and on deposit of the amount of the requisitioned item, the tins of palm oil and rapeseed oil used to be supplied to Katra godown where the petitioner was made Incharge. The said Katra godown was the central point for distribution of palm oil and rapeseed oil to all the districts of the State. The petitioner has tried to make out a case in the instant writ petition that he was surprised to find that the tins of palm oil, and rapeseed oil were delivered without any weighment to the representative of Katra godown and the petitioner objected to the said system and lodged his protest. The petitioner was instructed to take delivery from the Central Warehousing

Corporation's godown on the basis of counting of tins only until further orders and the petitioner went on accepting on that basis. A dispute arose about the contents of the tins as the weight was found to be lesser and lesser. Therefore, in order to ascertain the nature of the dispute, the said Corporation and respondent Nos. 2 and 3 conveyed their concern to the Corporation. Accordingly a letter dated 30.5.1986 was written to respondent No. 1 expressing its concern and for possible suggestion. The Government directed the Corporation to constitute a High Power Committee consisting of Joint Secretary (Supply) to the respondent No. 1, General Manager of respondent No. 2, District Manager of Corporation of Patna (Urban) (respondent No. 5), Manager Central Warehousing Corporation and the Deputy Director, Weights and Measurements Department to ascertain as to what was the approximate differences between the branded weight and actual weighment of the consignment. The petitioner was also asked to give an explanation. It is not in dispute that the petitioner was asked to give his explanation about the difference in weight and according to the petitioner he had given the said explanation. Thereafter by an order dated 14.9.1989 the petitioner's explanation was substantially accepted and loss to the extent of Rs. 8,81,009.89 was written off.

2. By the impugned order the Managing Director of the said Corporation annulled the previous order as impermissible, un-warranted and perverse and held that the petitioner is liable to pay (a) Rs. 50,875.87 for foodgrains etc. at Patna Urban (b) Rs. 1,56,354.50 for foodgrains etc. at Motihari and (c) Rs. 2,54,770.40 for foodgrains etc. at Jamshedpur, in all totalling Rs. 10,40,293.49 (Rupees ten lakhs forty thousand two hundred ninety three and paise fortynine) only towards loss on account of shortages.

3. The writ petitioner has challenged the said order of the Managing Director of the said Corporation on various grounds.

4. The petitioner's contention is that after the order dated 14.9.1989 was passed by a competent authority the same cannot be reviewed by the successor-in-office in absence of any power of review. The order was passed in September, 1989 and it is sought to be reviewed in 1998. The Court should not permit such belated action on the part of the Corporation. By the impugned order at Annexure-1 not only the previous order dated 14.9.1989 has been annulled but the authorities have fastened on the petitioner financial liability and directed to pay the petitioner an amount of Rs. 10,40,293.49 P.

5. Learned Counsel for the respondents has also contested all the aforesaid conventions raised by the petitioner's Counsel and submitted affidavit pointing out the serious involvement of the petitioner.

6. It is made clear that this Court will not go into the question of the petitioner's involvement or otherwise in the matter, since the case of the petitioner and the case of the respondent Corporation entirely rests on facts. This Court on hearing the rival contentions of the parties comes to the conclusion that the order which

is at Annexure-7 which was passed in respect of the petitioner was not a quasi judicial order. The said order was passed by the department concerned on an assessment of the petitioner's explanation and the materials which were existing on the record. The said Annexure-7 is in the nature of an inter departmental communication after fact verification. It was not an order passed in a quasi judicial proceeding. The nature of the order is exploratory and not adjudicatory. The order said was passed by the Corporation in exercise of its non-statutory administrative power. It is well settled that an administrative order need not be a speaking order. But reasons are desirable. See the Constitution Bench decision of the Supreme Court in the case of Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, . Nov Annexure-1 which purports to annul Annexure-7 even though an administrative order contains reasons.

7. It is equally well settled that in a matter relating to the administrative order, such order can be reviewed without there being any specific provision for the same. Reference in this connection may be made to the decision of the Apex Court in the case of R.R. Verma and Others Vs. Union of India (UOI) and Others, . The relevant passage at paragraph 5 at page 1463 of the said report is quoted below:

We do not think that the principle that the power to review must be conferred by Statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be question in a Court. We see no force in this submission of the learned Counsel, The appeal is, therefore, dismissed.

8. Therefore, this Court cannot entertain the objection of the petitioner that in absence of a power to review the order dated 14.9.1989 cannot be annulled.

9. The contention of the respondent Corporation is that the order dated 14.9.1989 was passed by the Acting Managing Director and not by the regularly appointed Managing Director and in support of the same learned Counsel for the respondent Corporation has relied on Annexure-H to show that Sri Ganga Prasad Thakur, who passed the order in favour of the petitioner writing off the loss of the Corporation was given additional charge of Managing Director until further orders. It is not in dispute that he was not a regularly appointed Managing Director. Therefore, learned Counsel for the respondent Corporation contended that the said Ganga Prasad Thakur should not have passed the order of writing off the loss in favour of the petitioner on 14.9.1989 specifically when he knew

that in the month of October, 1989 a regularly appointed Managing Director will take over charge. This aspect of the matter has been considered by this Court and this Court is of the opinion that when the said Mr. Thakur knew it very well that he was holding additional charge, he should not have shown that much of anxiety to give a clean chit to the petitioner and should have waited till the regularly Managing Director could have taken charge in the month of October, 1989. Therefore, this Court is of the opinion that the order dated 14.10.1989 contains an element of improper exercise of discretion on the part of Mr. Thakur. But the last point of the petitioner must succeed.

10. Learned Counsel for the respondent Corporation submits that the said Corporation follows the Bihar and Orissa Subordinate Services Rules and under the said Rules, Rule 2 provides for the penalty which can be imposed upon a member of Subordinate Service. Under Rule 2(5) it is provided that the recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of order can be imposed but in order to impose the said order, the provisions under Rule 55-A of the Civil Services (Classification, Control and Appeal) Rules should be followed. Here those provisions of Rule 55-A of the said Rules have not been followed. Therefore, this Court is of the opinion that by Annexure-1 the respondents authorities can annul the order dated 14.9.1989 and can re-open it but by the said order they cannot impose penalty on the incumbent. If they went to do so, they can do it only by initiating a separate proceeding in accordance with law.

11. For the reasons aforesaid the impugned order at Annexure-1 is hereby quashed to the extent indicated above and the direction in paragraphs 3 and 4 of the order dated 16.4.1998 (Annexure-1) is hereby quashed. But this Court gives the Corporation express liberty to initiate, if they are so advised, proceedings according to law against the petitioner to recover their financial losses if any.

12. With the direction/observation made above, this writ petition is disposed of. There will be no order as to costs.