
(2004) 09 PAT CK 0059
In the Patna High Court
Case No : C.W.J.C. No. 6002 of 2000

Vijay Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 35

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2004) 4 PLJR 547

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr, Nirmal Kumar Sinha for the petitioners, Mr. Rajeshwar Prasad, Govt. Pleader No. VI for respondent nos. 1 to 7, and Mr. S.K. Thakur for respondent nos. 8 to 11. This application is directed against the order dated 23.2.99 (Annexure 3), passed by the learned Director of Consolidation (Headquarters, Bihar, Patna) in Revision Case No. 240 of 1997 (Keshri Nandan Prasad Sah vs. Gulabo Devi & Ors.) in purported exercise of powers u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. On a perusal of the materials on record and consideration of the submissions of learned counsel for the parties, it appears to me that the impugned order is bad in law for reasons more than one. It is first of all vulnerable on the ground that it has been passed by a Deputy Director of Consolidation. In the scheme of the Act, the power of revision is vested with the authority not below the rank of Joint Director of Consolidation. Secondly, the impugned order does not state any reason in its support. In an order covering four pages, three-and-a half pages have been devoted to statement of the case of the parties and the revision application has been disposed of by the following portion of the order:-

It is thus manifest that the learned Deputy Director has not assigned any reason

in support of the impugned order which is impermissible in law. Learned counsel for the petitioner has rightly relied on the judgment of the Supreme Court reported in Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, . Relying on a number of its earlier judgments, the Supreme Court has observed as follows in paragraph 14 of the judgment:-

It is a cardinal principle of rule of law which governs our policy that the Court including Writ Court is required to record reasons while disposing of a writ petition in order to enable the litigants more particularly the aggrieved party to know the reasons which weighed with the mind of the Court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative for the fair and equitable administration of justice. More so when there is a statutory provision for appeal to the higher Court in the hierarchy of Courts in order to enable the superior Court or the Appellate Court to know or to be apprised of the reasons which impelled the Court to pass the order in question. This recording of reasons in deciding cases or applications affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like "dismissed" or "rejected" will be made without passing a reasoned order or a speaking order. It is not, however, necessary that the order disposing of a writ petition or of a cause must be lengthy one recording in detail all the reasons that played in the mind of the Court in coming to the decision. What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the Court in coming to its final conclusions and in disposing of the petition or the cause by making the order, thereby enabling both party seeking justice as well as the superior court where an appeal lies to know the mind of the Court as well as the reasons for its finding on questions of law and facts in deciding the said petition or cause. In other words fair play and justice demands that justice must not only be done but must seem to have been done.

The judgment of the Supreme Court in the case of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, is relevant in the present context, the relevant portion of paragraph 24 of which is set out hereinbelow for the facility of quick reference:- The giving of reasons, as Lord Denning put it in Breen v. Amalgamated Engineering Union (1971) 1 All 1148 "is one of the fundamentals of good administration" and, to recall the words of this Court in Khudiram Das Vs. The State of West Bengal and Others, in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability." The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Arts. 14 & 16(1).

This writ petition is allowed. The impugned order dated 23.2.99 (Annexure 3) is set aside, and the matter goes back to the Director of Consolidation for disposal of the revision application in accordance with law. He should be mindful of the

legal position that the powers of revision cannot be delegated to an authority below the rank of Joint Director.