

Court No. - 17

Case :- WRIT - C No. - 7565 of 2023

Petitioner :- Bindu Devi

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Panchayat Raj, Lko. And 2 Others

Counsel for Petitioner :- Padam Kant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Padam Kant Mishra, learned counsel for the petitioner as well as learned Standing counsel on behalf of the respondents.

2. The counter affidavit filed on behalf of respondent No.s 1 to 3 is taken on record.

3.It has been submitted on behalf of the petitioner that the petitioner is ex Gram Pradhan of Gram Panchayat Rahetua Parasrampur, Block Gaura, District Pratapgarh for the period from 2016 to 2021. The period during which the petitioner held the said post certain allegations were levelled by one Shesh Mani against whom the petitioner had lodged an FIR due to which he was arrested and sent to prison. The said Shesh Mani moved a complaint against the petitioner alleging that while discharging the duties of Gram Pradhan he had misappropriated the funds and even the work which was supposed to be undertaken and completed was never done including construction of toilets, boring of tube wells, filling of water tanks etc. To verify the allegations levelled in the complaint a preliminary enquiry was conducted by District Basic Education Officer along with the Assistant Engineer (Minor Irrigation), District Pratapgarh. The said inquiry report was submitted on 14.10.2022 where it seems that the allegations were found to be correct. During the inquiry 191 villagers were examined whose statements were recorded and all of them stated that the toilets which were supposed to be constructed in their houses have not been constructed. On the basis of the said inquiry report show cause notice was given to the petitioner on 22.10.2022.

4. The petitioner duly replied to the show cause notice and

denied the allegations levelled therein. It was further stated that during the said inquiry the petitioner was never associated and further that copy of the inquiry report and its contents were never disclosed to the petitioner and merely on the basis of the said reply the order impugned was passed against the petitioner under Section 95 (1) (g) of U.P. Panchayat Raj Act, 1947 seeking to recover an amount of Rs.13,25,339.50 for the loss caused to the State exchequer. One of the main grounds for assailing the impugned order dated 7.6.2023 is that the inquiry report on the basis of which the impugned order has been passed was never given to the petitioner and consequently the petitioner was not given any opportunity to defend herself and, hence, the proceedings were held in gross violation of principles of natural justice.

5. To verify the contents of the allegations levelled by the petitioner the State was asked to file counter affidavit clearly indicating as to whether copy of the inquiry report has been given to the petitioner along with the show cause notice or at any time during the said inquiry.

6. The counter affidavit has been filed where in paragraph 4 (C) it has been stated that as per Rules, it is not necessary to give copy of the enquiry report and other evidences were made available by the enquiry committee to the petitioner. It is further stated that the petitioner never demanded copy of the inquiry report.

7. From a perusal of the counter affidavit there is no doubt that the copy of the inquiry report was not given to the petitioner and on the other hand, the entire proceedings have been concluded against the petitioner relying solely upon the report given by the inquiry committee. In the aforesaid circumstances the petitioner submits that the proceedings are illegal and arbitrary and deserve to be set aside. It is further stated that in the impugned order the District Magistrate has held the petitioner to be guilty solely relying upon the findings as recorded in the inquiry report dated 14.10.2022 and accordingly the petitioner not having been given copy of the same, the entire proceedings are illegal, arbitrary and violative of Article 14 of the Constitution of India and also violative of principles of natural justice.

8. Learned Standing counsel, on the other hand, has supported the impugned order but does not dispute the fact that copy of

the inquiry report was never given to the petitioner. He submits that the extracts of the inquiry report were mentioned in the show cause notice. He further does not dispute the fact that the impugned order dated 7.6.2023 has been passed by the District Magistrate relying only upon the inquiry report.

9. I have heard learned counsel for the parties and perused the records.

10. There is no dispute with regard to the fact that the allegations levelled against the petitioner were inquired by the inquiry committee consisting of District Basic Education Officer and Assistant Engineer (Irrigation Department), District Pratapgarh which submitted report on 14.10.2022 indicting the petitioner and holding that the charges levelled in various complaints by the villagers stood proved. During the inquiry they had examined 191 villagers, who had given evidence that they were neither paid any money nor toilets were constructed in their houses. There were other allegations that with regard to certain people money was withdrawn more than two times for construction of toilets but the toilets were never constructed. It is on the basis of these 191 villagers it was concluded that the amount of money spent on construction of toilets by the Gram Pradhan have actually been misappropriated by her.

11. The petitioner, on the other hand, had filed reply denying the allegations. The District Magistrate while passing the impugned order has merely reiterated the contents of the inquiry report and held that the petitioner is guilty with regard to the allegations levelled in the show cause notice. He did not consider any other material, evidence or statements etc. at the time of passing of the impugned order. There is no other material considered by the District Magistrate in the entire impugned order. It is in aforesaid circumstances that when query was made to the respondents with regard to submission of inquiry report to the petitioner it has been stated that as per rules it is not necessary to give copy of the inquiry report and other evidences made available by the enquiry committee to the petitioner.

12. It is surprising that such a basic and fundamental procedure with regard to conduct of an inquiry is also not known to such higher and senior officials of the State who are given the task of conducting inquiry. One of the basic features of conducting an inquiry against any individual is that he should be given

adequate opportunity of hearing. A person against whom inquiry proceedings are conducted has to be informed of all the charges and all the material in support of the charges so that he is able to adequately defend himself and respond to the allegations levelled in the charges. By not supplying the documents, reliance on which have been placed by the inquiry officer, undoubtedly prejudices the defence of the delinquent and consequently in case such material is not made available to him, the inquiry would be a mere farce and would be arbitrary being violative of the basic and fundamental principles of natural justice.

13. The question as to whether non supply of the inquiry report would prejudice the delinquent was duly considered by Supreme Court in the case of **Union of India v. Bishamber Das Dogra, (2009) 13 SCC 102** where it has been held as under:-

14. *It is settled legal position that an order is required to be examined on the touchstone of doctrine of prejudice. A Constitution Bench of this Court in ECIL v. B. Karunakar [(1993) 4 SCC 727] , considered the issue at length and after taking into consideration its earlier judgment in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588] , came to the conclusion that (B. Karunakar case [(1993) 4 SCC 727] furnishing the copy of the enquiry report and consideration of the employee's reply to the same by the disciplinary authority constitute an integral part of the enquiry.*

“28. ... The second stage follows the enquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty.”

Thus, it is the right of the employee to get the opportunity to make a representation against the findings in the enquiry report.

15. However, the Court further held that : (B. Karunakar case [(1993) 4 SCC 727] :

“30. (v) ... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights.”

The Court further observed as under : (B. Karunakar case [(1993) 4 SCC 727]

“30. (v) ... They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It

amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice.

31. ... It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

(emphasis added)

14. From the aforesaid, it is clear that entire inquiry has been conducted in a most illegal and arbitrary manner without giving a copy of the inquiry report to the petitioner and consequently the said inquiry cannot be sustained and is accordingly quashed. The impugned order dated 7.6.2023 is set aside.

15. The respondents are given liberty to conduct inquiry afresh after giving full opportunity to the petitioner in accordance with law.

16. The writ petition thus stands **allowed**.

(Alok Mathur, J.)

Order Date :- 28.10.2023

RKM.