

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7219 of 1998

Dayal Sharan Baxi, Son of Baxi Harihar Prasad, resident of Village-Murar, P.S. Murar, District Buxar (Bihar).
Ex-selection Grade Assistant of the Bihar State Warehousing Corporation, Maurya Lok Complex, Patna

.... Petitioner/s

Versus

1. Bihar State Warehousing Corporation, Maurya Lok Complex, Patna. Through its' Managing Director.
2. Managing Director, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna
3. Shri Ram Nandan Paswan, I. A.S, Additional Secretary, Co-operative Department, Govt. of Bihar, Patna-cum Incharge Managing Director, working under Interim arrangement, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna
4. Shri Saiyad Ehasan Ahmad, Ex-Managing Director, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna at Present posted as the Deputy Development Commissioner, Govt. of Bihar Aurangabad-cum Chief Executive Officer, District Board, Aurangabad
5. Shri Ratan Kumar, Ex-Secretary-cum-Conducting Officer, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna At present posted as the Special Officer, Chief Secretary's Cell, Govt. Bihar, Patna
6. Shri Ramesh Chandra Verma, Divisional Manager-cum- Presenting Officer, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 6988 of 2000

Shashi Bhushan Prasad, son of Late Dharamdeo Prasad Resident of Mohalla-Maksuspur, At- PO Distt. Munger, & Ex. Assistant Superintendent , of the Bihar State Warehousing Corporation, Maurya Lok Complex, Patna

.... Petitioner/s

Versus

1. Bihar State Warehousing Corporation, Maurya Lok Complex, Patna. Through its' Managing Director
2. Managing Director, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna
3. Shri Ram Nandan Paswan, I. A.S, Additional Secretary, Co-operative Department, Govt. of Bihar, Patna-cum Incharge Managing Director, working under Interim arrangement, Bihar State Warehousing Corporation, Maurya Lok Complex, Patna
4. Shri K.K. Prasad, Divisional Manager (Revenue)-cum-Conducting Officer, Bihar State Warehousing Corporation Mauryalok compoex, Patna

5. Shri Mathura Prasad (Retd.) the then Divisional Manager, Chootnagpur Division,
Bihar State Warehousing Corporation Maurya Lok Complex, Patna

.... Respondent/s

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Appearance :

(In CWJC No. 7219 of 1998)

For the Petitioner/s : Mr. Alok Kumar Sinha
With Ms. Madhuri Lata

For the Corporation : Mr. Bipin Bihar Singh

(In CWJC No. 6988 of 2000)

For the Petitioner/s : Mr. Abhay Shanker Singh
With Mr. A.K. Mishra
& Ms. Manisha Singh

For the Corporation : Mr. Bipin Bihari Singh

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 16-02-2015

1. These two writ applications instituted under Article 226 of the Constitution of India have been heard together and are being disposed of by the present common Judgment as common question of law is involved in both these cases.

2. The petitioner of CWJC No. 7219 of 1998 is aggrieved by the Office Order No. 250 dated 13.6.1998 (Annexure-20) passed by the Managing Director of Bihar State Warehousing Corporation, Mourya Lok Complex, Patna (hereinafter referred to as the Corporation) whereas the petitioner of CWJC No. 6988 of 2000 is aggrieved by an Office Order No. 159 dated 03.06.2000 passed by the Managing Director of the same Corporation.

3. Petitioner of CWJC No. 7219 of 1998 was holding the post of Senior Grade Assistant whereas the petitioner of CWJC No.

6988 of 2000 was holding the post of Assistant Superintendent in the Corporation on the respective dates when the orders, which are under challenge were passed by the Managing Director. In the earlier cases. by the impugned orders, the petitioners have been removed from service.

4. Mr. Ram Nandan Paswan, an I. A. S, passed the impugned orders while holding additional charge of Managing Director of the Corporation. The orders have been challenged on various grounds including the ground that the orders are beyond jurisdiction inasmuch as, said Ram Nandan Paswan could not be said to have been appointed as Managing Director of the Corporation in terms of Section 20 of the Warehousing Corporation Act, 1962. It has been pleaded that the post of Managing Director of State Warehousing Corporation is a statutory post and appointment to the posts are governed by Section 20 of the Warehousing Corporation Act, 1962. It has been contended that the power of removal from service of the employees of the Corporation is also statutory in nature and is governed by the Bihar State Warehousing Corporation Staff Regulations, 1958 framed under Section 54 (i) of the Agricultural Produce (Development and Warehousing) Corporation Act, 1956.

5. To question the jurisdiction of Sri Ram Nandan Paswan to pass the impugned orders on the ground of lack of jurisdiction, my



attention has been drawn to Section 20 (1) (c) of the Act which requires that a Managing Director can be appointed by the State Government in consultation with the Directors referred to in Clause (a) and (b) of the said Section and with the previous approval of the Central Warehousing Corporation. This is specific case of the petitioners that no prior approval of the Central Warehousing Corporation was obtained before giving the said Ram Nandan Paswan, additional charge of Managing Director of the Corporation.

6. Learned counsel for the petitioners have relied upon a Division Bench judgment of this Court reported in 1995(1) PLJR 1 (Braj Narain Sharma Vs. Mahesh Prasad Mandal & ors) to contend that the Central Warehousing Corporation could not grant post facto approval of such appointment for the purpose of validating the acts done by the Managing Director during the period when the Managing Director worked as such without previous approval of the Central Warehousing Corporation. Paragraphs 4 and 5 of the said judgment is relevant and are being quoted hereinbelow:-

“4. Counsel for the petitioner contends that Section 20(2) of the Warehousing Corporation Act, 1962 provides that the appointment of the Chairman shall be made only with the previous approval of the Central Warehousing Corporation. The appointment therefore, made in anticipation of the Central Warehousing Corporation. The appointment therefore, made in anticipation of the approval of the Central Warehousing Corporation is illegal and contrary to the provisions of the Act. Section 20(2) of

the Act provides as follows:-

“The Chairman of the Board of Directors shall be appointed by the State Government from among the Directors of the State Warehousing corporation with the previous approval of the Central Warehousing Corporation.”

The second is quite clear and in so many words the requirement is not only as to the approval of the Central Warehousing Corporation but to the “previous approval” of the Central Warehousing Corporation. The words used by the Legislature can bear no other meaning than that the approval must be taken before the appointment is made.

5. Having regard to the expressed words of the statute, the respondent no.1 cannot be permitted to act contrary thereto. If a statute requires that a thing must be done in a particular manner, it must be done in that manner or not at all. If we were to uphold the submission of the Advocate General that the term of the petitioner should be reckoned from the date on which the approval was granted by the Central Warehousing Corporation namely with effect from 9.12.1991, the provisions can be misused resulting in serious irregularities. An appointment may be made and the approval may be sought for much later say after two years. If approval is granted it can be contended that term of three years shall commence from the date of approval, which shall mean an effective term of five years contrary to the statute.”

7. Learned counsel for the petitioners have also relied upon another decision of this Court in case of Triloki Prasad Singh Vs. State of Bihar reported in 1999(2) PLJR 543 in support of the same submission that Sri Ram Nandan Paswan could not have passed the order while holding additional charge of Managing Director in addition to his regular charge as Additional Secretary, Co-operative

Department, Government of Bihar. Paragraph 9 of the said decision is being reproduced hereinbelow:-

“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.”

8. It has not been disputed that there was no approval by the Central Warehousing Corporation prior to the date when said Ram Nandan Paswan was given the additional charge of Managing Director of the Central Warehousing Corporation. I find substance,



therefore, in the submission that while holding additional charge of the Managing Director of the Corporation, without prior approval of the Central Warehousing Corporation, the said Ram Nandan Paswan could not have exercised its statutory functions/powers vested in him under the Bihar State Warehousing Corporation Staff Regulation, 1958.

9. Learned counsel for the respondents has contended that these writ applications should not be entertained as the petitioners failed to avail the alternative remedy of appeal before the Chairman of the Bihar State Warehousing Corporation. He has further contended that subsequently, post facto approval of the appointment of Ram Nandan Paswan as Managing Director of the Corporation was given by the Central Warehousing Corporation and therefore, the orders may not be interfered with on that ground. The plea that these writ applications are not maintainable as the petitioners have failed to take recourse to alternative remedy of appeal, does not convince me much as I am of the view that the orders passed by the Managing Director is without jurisdiction. Reference may be in this regard to a decision of this Court in case of Md. Mahmudul Hasan Vs. State of Bihar & ors reported in 1997(2) PLJR 953. Paragraph 18 of the judgment reads thus:-

“18. When an authority is acting beyond its jurisdiction a writ petitioner, without

exhausting the statutory remedy of appeal, is maintainable. For the purpose of the aforesaid proposition, reliance can be place on the Constitution Bench judgment of the Supreme Court in the case of State of U.P. Vs. Mohammed Nooh reported in AIR 1958 SC page 86. The relevant observations of the Court, on a consideration of various authorities, were expressed by the Chief Justice S.R. Das, thus:

“There may conceivably be cases where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is no patent and loudly obtrusive that leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision.” (page 94, paragraph 11 of the report)”.

10. In view of the law laid down by this Court in case of Braj Narain Shrma (supra), the submission made on behalf of the Corporation cannot be accepted.

11. The orders impugned dated 13.6.1998 (Annexure-20) of CWJC No. 7219 of 1998 and dated 3.6.2000 (Annexure-15) in CWJC No. 6988 of 2000 both passed by the said Ram Nandan Paswan while holding additional charge of Managing Director are quashed, as beyond jurisdiction as they have been passed by a person not appointed as Managing Director, in accordance with law.

12. The matter is remanded back to the Managing Director, Bihar State Warehousing Corporation to take a decision afresh on the basis of the report of the Inquiry Officer.

13. It has been informed by the learned counsel for the petitioners that the petitioners, during the pendency of the writ applications, have retired after attaining the age of superannuation. Keeping in view the changed circumstance, I would direct the Managing Director to take a final decision in the departmental proceeding upon remand of the matter by this Court considering as if he were passing the said order on the date that the earlier order was passed. This order I am passing because otherwise it may give rise to certain complications because the petitioners in the meanwhile retired. The petitioners' entitlement shall certainly be governed by the decision to be taken by the Managing Director upon remand by the present order. Such decision must be taken within a period of six months from the date of receipt/production of a copy of this order.

14. These writ applications are allowed accordingly.

(Chakradhari Sharan Singh, J)

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