IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3194 of 2014

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1. Jitendra Kumar Singh S/O Sri Sitaram Singh At Present Posted As Adm Patna (Department Enquiry) Patna Collecteriate, Patna, P.S. Gandhi Maidan, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Patna
2. The Principal Secretary, General Administration, Govt. Of Bihar, Patna
3. The Principal Secretary, Urban Development Department, Govt. Of Bihar, Patna
4. The Secretary, Urban Development Department, Govt. Of Bihar, Patna
5. The Municipal Corporation Through Additional Municipal Commissioner (Estt.) Bihar, Patna
6. The Additional Secretary, General Administration, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh,. Sr. Advocate
Mr. Rajeev Kumar Singh, Advocate

For the Respondent/s : Mr. SANTOSH KR JHA, GP3

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 18-12-2015

Heard learned counsel for the petitioner and the respondents.

2. The petitioner is a member of Bihar Administrative Service and holds a rank of Additional District Magistrate in the Government of Bihar. He seeks quashing of Memo No. 521, dated 15.01.2014 along with Prapatra (Ka) issued by the Additional Secretary, General Administration Department, Government of Bihar, whereby a decision was taken to initiate a departmental proceeding against him. A copy of the impugned order along with Prapatra (Ka) is annexed as Annexure-1.

3. The departmental proceeding was initiated for the reasons that the petitioner in his role as an Assistant Administrator, while disposing an appeal of Sujata Hotel Private Limited, drastically reduced the Holding Tax from Rs.43,68,374.10 paise to Rs. 6,95,700/- vide his order dated 12.04.1996.

4. The allegation in nut shell is that though Sujata Hotel Limited (Chanakya) is on the principal main road, still the quantum of holding tax was reduced to bequeath unlawful gain to the hotel.

5. The details of the case in brief is as follows:

6. The petitioner entered into Bihar Administrative Service in the year 1985. On 31.01.1994, his services was placed with the Urban Development Department by the Personnel and Administrative Department. He was subsequently posted as an Assistant Administrator in Nutan Rajdhani Circle, Patna vide Memo dated 2.7.1994 issued under signature of Deputy Secretary, Urban Development Department. In the year 1996, 'The Assessment of annual rental value of Holding Tax Rule 1993' was amended, enhancing the Holding Tax Rates. The roads were categorized into various categories, like Principal Main Road, Main Road and other Roads for purposes of assessment of Holding tax.

7. A large number of objections came to be filed by

the residents before the Administrator, Patna Municipal Corporation, In order to ensure swift disposal, the Administrator vide his Memo no. 122 dated 13.01.1996 in exercise of his power under section 64 of the Municipal Act, 1917, delegated the power to all Assistant Administrators to decide the objections/appeals in view of amended Rules 1996. One such objection was filed by Sujata Hotel Private Limited having its holding near 'R' Block, bearing Holding no. 21 under Nutan Rajdhani Circle, against assessment of new holding tax assessed as Rs. 43,68,374.10 paise per year. In support of his case, the objector also produced before the petitioner a copy of the order dated 30.11.1994 passed in Appeal No. 294 by the then Administrator, Patna Municipal Corporation, who recently had reduced the holding tax from Rs. 18,00,000/- to Rs.4,00,000/-.

8. The petitioner acting under the delegated authority in his wisdom reduced the Holding Tax from Rs.43,68,374.10 paise to Rs. 6,95,700/- vide order dated 13.1.1996. After 8 to 9 years, the then Additional Commissioner-cum Chief Account Officer, Sri Ajay Kumar Chaudhary vide his letter no. 18, dated 15.11.2005 recommended administrative actions against the petitioner for his role in lowering the annual holding tax from Rs.43,68,374.10 paise to Rs. 6,95,700/- and informed the Commissioner-cum-Chief Executive Officer, Patna Municipal Commissioner according.

9. It appears that after lapse of 10 years, the Additional Secretary, Personnel and Administrative Reforms Department vide Memo no. 13082, dated 28.12.2006 issued Prapatra (K) seeking explanation with respect to his alleged role in reducing the Holding Tax from Rs.43,68,374.10 paise to Rs. 6,95,700/-, though the holding was situated on the Principal Main Road. It was further alleged that the delinquent willfully reduced the holding rate in order to bequeath unlawful gain to the hotel for ulterior consideration.

10. The petitioner submitted his show-cause on 24.01.2007 as contained in Annexure-7. However, nothing noticeable happened after submission of the show-cause reply, save and except that the petitioner's services was placed in another department. It appears that on 10.11.2008, the petitioner was suspended for a different cause, while serving in Cooperative Department, which order was stayed by this Court on 03.03.2009 in C.W.J.C. No. 1869 of 2008 and the matter was dropped.

11. It was again only after further 8 years of such issuance of Pra-patra 'Ka' dated 28.12.2006, that the notification vide Memo no. 521, dated 15.01.2014 along with Pra-patra (Ka), was issued under the signature of the Additional Secretary, General Administration Department, Government of Bihar, initiating Departmental proceeding against the petitioner for his alleged role in

reducing the holding tax of Sujata Hotel Private Limited (Chanakya) vide his order dated 12.04.1996. The said order is in challenge in this writ application on various grounds.

12. The petitioner contends that it is unreasonable to initiate a departmental proceeding after lapse of 18 years, as the respondents were aware of the alleged irregularities and illegalities. A charge memo was issued on 28.12.2006 in Pra-patra (Ka) to which the petitioner replied on 24.01.2007. The matter did not proceed any further for a long period and there could be a reasonable inference that the explanation was accepted. Now, after lapse of almost 8 years from the issuance of charge-memo and 18 years from the date of alleged cause of action, the petitioner is sought to be proceeded, when his case is under consideration for promotion in Indian Administrative Service Cadre, being the senior most A.D.M. He next submits that the order dated 12.04.1996 reducing the Holding Tax was passed in discharge of his functions under quasi-judicial power, delegated by the Administrator. Furthermore, the order was passed in light of the earlier order dated 30.11.1994 passed by the Administrator, PMC by which he had reduced the Holding Tax from Rs.18,00,000/- to Rs.4,00,000/- in Appeal No. 2 of 1993. He submits that there is no material on record to hold that the petitioner passed the impugned order for ulterior considerations.

13. It was further case of the petitioner that if the respondents were aggrieved by the order, dated 12.4.1996 reducing the holding tax, nothing stopped from either reviewing, or filing an appeal/Revision/Writ against the said order before the superior Court. On the other hand, it is Sujata Hotel Limited (Chanakya) which filed C.W.J.C. No.450 of 2011 against subsequent order of assessment, dated 25.11.2010.

14. Counsel for the respondents justifying the action submits that the petitioner arbitrarily reduced the holding tax from Rs.43,68,374.10 to Rs.6,95,700 ignoring the vital fact of the holding standing on the principal main road. He submits that the petitioner ought not to have adjudicated the categorization of the road on which Sujata Hotel Limited is situated, but exceeding his jurisdiction, he drastically reduced the annual rent of the Hotel. He submits that the petitioner cannot take aid of the earlier order passed by the Administrator dated 30.11.1984 passed in Appeal No.2 of 1981, as it was based on unrevised rate. He submits that consequent to 1996 amendment in 1993 Rules, rates were appropriately enhanced on the basis of categorization of road and constructions made on the holding. He further submits that the records of the case of Sujata Hotel Limited was misplaced and as such some delay occurred in issuing charge memo, dated 28.12.2006 along with Pra-patra ‘Ka’, as contained in

Annexure-16 to the writ application. Referring to the Interlocutory Application, the respondents submit that some delay occurred as the reply from the Urban Development Department and the Patna Municipal Corporation were not forthcoming. In support of his submissions, the respondents refer to Paragraph 16 of the Interlocutory Application, wherein reference has been made to various letters of the General Administrative department to Urban Development Department, which are contained in Annexure-J series to the Interlocutory Application filed on behalf of the Government. However, no response was received till early January, 2014. He submits that on account of the aforesaid reasons, the matter did not progress and thus the General Administrative Department frame charges against the petitioner contained in Pra-patra 'Ka' vide its memo No.521, dated 15.1.2014 and decided to proceed with the departmental enquiry. He submits that this Court would be reluctant to quash an enquiry on the ground of delay, if the charges are prima facie made out against the delinquent. He further submits that initially vide memo dated 18.12.2006, the petitioner was asked to submit his explanation with respect to memo of charge and as such it cannot be said that the proceeding was started in the year 2014 for the first time.

15. Counsel for the State further submits that in fact the rates of holding tax of Sujata Hotel Limited was reviewed on

25.11.2010, against which Sujata Hotel Limited filed writ application bearing C.W.J.C. No.450 of 2011.

16. Counsel for the Patna Municipal Corporation submits that the action against the petitioner was to be taken by the General Administrative Department being his controlling authority. He submits that the Additional Municipal Commissioner (Establishment) vide its letter dated 2.1.2014 expressed his opinion that there is prima facie material to proceed against the petitioner.

17. I have heard learned counsel for the petitioner and the State as well as learned counsel appearing on behalf of the Patna Municipal Corporation. The petitioner has challenged the initiation of the departmental proceeding contained in Notification dated 16.1.2014 primarily on the ground that initiation of a proceeding on the basis of allegations that had taken place 18 years ago, is unreasonable and bad in law.

18. The issue whether a departmental proceeding can be initiated with respect to an offence which took place 12 years and beyond came for consideration before the Hon'ble Apex Court in the case of ***State of Madhya Pradesh v. Bani Singh, reported in 1990 Supp SCC 738***, particularly paragraph 4, which would be relevant in the context, is quoted herein below:

> *"4. The irregularities which were the subject-matter of the enquiry are said to have taken place between*

the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal".

19. In the aforesaid case the proceeding was started after 12 years of cause of occurrence, which was quashed by the Tribunal on the ground of delay and laches. The State being aggrieved by the order of the Tribunal filed appeal before the Hon'ble Apex Court pleading that the Tribunal ought not to have quashed the proceeding merely on the ground of delay and laches and should have allowed enquiry to proceed to enable the matter to be decided on merit. The Hon'ble Apex Court observed that it cannot be said that the department was unaware of the irregularity and as such it was unreasonable to initiate a departmental proceeding after 12 years, more so when there is no satisfactory explanation for the inordinate delay in issuing the charge memo.

20. Similar matter again came for consideration in the

case of ***State of A.P. v. N. Radhakishan, reported in (1998) 4 SCC 154*** particularly paragraph 20. In the aforesaid case, the respondent worked in the Municipal Corporation of Hyderabad in 1979. He was posted as City Planner, Municipal Corporation of Visakhapatnam in 1981. A report of acts of omission and commission was made against him with respect to irregularities in deviations and unauthorized constructions in multi storied complexes in the twin cities of Hyderabad and Secunderabad in collusion with municipal authorities. The proceeding was challenged on the ground of delay which traveled up to the Apex Court. The Hon'ble Apex Court after hearing the parties observed that it is not possible to lay down predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceeding and each case has to be examined in the facts and circumstances of that case. The Hon'ble Apex Court observed that the essence of the matter is that the Court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to continue after the delay, particularly when the delay is abnormal and there is no explanation for the delay. The Apex Court further observed that the delinquent employee too has a right that the disciplinary proceeding against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss, when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. The relevant extract of paragraph 19 of the judgment in the case of State of A.P. v. N. Radhakishan which is relevant in the context is quoted herein below:

> *"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceeding against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary*

proceedings. Ultimately, the court is to balance these two diverse considerations".

21. Again in the case of ***P.V. Mahadevan vs. MD, T.N. Housing Board, reported in (2005)6 SCC 636,*** the issue of inordinate delay in initiating departmental proceeding was under consideration. The Hon'ble Apex Court observed that in the circumstances allowing the respondents to proceed further with the departmental proceedings after inordinate delay of 10 years would be prejudicial to the appellant as he had already suffered enough and more on account of disciplinary proceedings.

22. In the instant case, the basis which formed the formulation of charges is the proprietary of a quasi judicial order passed by the petitioner on 12.4.1996 in objection appeal in exercise of power delegated by the Administrator under section 64(Ka) of the Patna Municipal Act, 1951 reduced the holding tax from Rs.43,68,374.10 to Rs.6,95,700/-.

23. It is the case of the respondents that as per amended rule 1996, holding was situated on the principal main road and as such the petitioner acted with ulterior consideration in reducing the holding tax from Rs.43,58,374 to Rs.6,95,700/-.

24. I find that though the respondents were aware of the alleged irregularity, only in the year 2006 a charge memo dated 28.12.2006, contained in Pra-patra 'Ka' (Annexure-16) was issued.

It is not in dispute that the petitioner furnished his explanation on 24.1.2007. Nothing prevented the department from proceeding further in the matter. The delay has been sought to be explained on the premises that the controlling department, namely the General Administrative Department, issued several letters contained in Annexure-J series sought necessary information from both the Urban Development Department as well as Patna Municipal Corporation and finally some response came only on 2.1.2014 of Patna Municipal Corporation contained in Annexure-29 which forms the basis once again in issuing Pra-patra 'Ka' contained in charges based on same allegation vide memo no.521, dated 15.1.2014.

25. The case of respondents is that in fact the steps were taken in the year 2006, though the proceeding was started on 15.1.2014.

26. I find that first charge memo was issued on 18.12.2006 (Annexure-16) with respect to quasi judicial order under section 164(1) of Municipal Act in the year 1996, to which the petitioner filed his explanation on 24.1.2007. Thereafter, what proceeded was a number of letters from General Administrative Department to Urban Development Department and Municipal Corporation and as such the charge memo dated 28.12.2006 apparently had lost its efficacy

and fresh charge memo with respect to same incident going back to 1996 was issued on 15.1.2014. The respondents were well aware of the alleged irregularities committed by the petitioner, still for reasons best known to them, the first charge memo resting on same allegations was issued 10 years after the occurrence to which petitioner submitted his reply. However nothing happened. After interval of further 8 years substantially similar charge contained in Pra-Patra 'Ka', again has been issued when the petitioner's case for promotion to the IAS Cadre was ripe for consideration.

27. I find that there is no satisfactory explanation for the inordinate delay in issuing the charge memo and for which the officer is in no way to be blamed. A delinquent has right that the disciplinary proceedings are concluded expeditiously and is not made to under go mental agony for a period as long as 18 years. In my view the initiation of departmental proceeding after 18 years of the alleged incident is unfair, unreasonable and is fully covered under the decisions of the Hon'ble Apex Court rendered in the cases of (i) ***State of Madhya Pradesh v. Bani Singh, reported in 1990 Supp SCC 738, (ii) State of A.P. v. N. Radhakishan, reported in (1998) 4 SCC 154, and (iii) P.V. Mahadevan v. MD, T.N. Housing Board, reported in (2005) 6 SCC 636.*** This writ application is

allowed and the notification, contained in memo no.521, dated 15.1.2014 along with Pra-patra 'Ka' issued by the Additional Secretary, General Administration, Government of Bihar, Patna is not sustainable in law and is, accordingly, set aside.

(Samarendra Pratap Singh, J)

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