

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1289 of 2014

IN

Civil Writ Jurisdiction Case No. 2945 of 2014

- =====
1. The Food Corporation of India through its Chairman, Khadya Sadan 16-20 Barakhamba Lane, New Delhi - 110 001.
 2. The Chairman, Food Corporation of India, Khadya Sadan, 16-20 Barakhamba Lane, New Delhi - 110 001.
 3. The Managing Director, Food Corporation of India, Khadya Sadan 16-20 Barakhamba Lane, New Delhi - 110 001.
 4. The Executive Director (East Zone), Food Corporation of India, Kolkata.
 5. The Chief General Manager (F & A / Pers.), Food Corporation of India, Arunachal Bhawan, Exhibition Road, Patna.
 6. The General Manager (Bihar) Food Corporation of India, Arunachal Bhawan, Exhibition Road, Patna

.... Respondents-Appellant/s

Versus

Sri Jayant Kumar, son of late Ishwar Chandra Prasad, resident of M.G. Nagar, C/o Smt. Uma Devi, near Maa Utsav Hall, Post Office- B.H. Colony, Police Station- Agam Kuan, District-Patna, ex. Manager (Civil Engg.), Kankarbagh, Patna-800 026.

....Petitioner- Respondent/s

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Appearance :

For the Appellant/s : Mr. Vinod Kanth, Senior Advocate

Mr. Prabhakar Tekriwal, Advocate

For the Respondent/s : Mr. Syed Alamdar Hussain, Advocate

Mr. Syed Ashger Nazami, Advocate

Ms. Minu Kumari, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-06-2015

This Letters Patent Appeal is filed by the Food Corporation of India, feeling aggrieved by the order dated 05.08.2014 passed by the learned Single Judge in CWJC No.2945 of 2014.

The facts relating to the case, in brief, are as under:

The Food Corporation of India undertakes the work of procurement of paddy in the State of Bihar, to benefit the farmers and to avoid middleman. Certain amount, representing incentive is also required to be paid to the farmers, for each quintal of paddy produced by them. For this purpose, the Food Corporation of India opened several paddy procurement centres in the State, year after year.

In the year 2009, the paddy procurement centres were established at various places, including the one, at Dumraon in Buxar district. On receiving some information that abnormal quantity of paddy, being about 12427.00 MT, was purchased on a single day, i.e. 30.05.2009, the Area Manager of Food Corporation of India, Patna initiated steps and as a preliminary action, he constituted a committee of three officials comprising of the respondent herein by name Jayant Kumar, and two others viz. U. C.

Rai and Suman Bhai Patel, who were in the category of Managers. They were asked to visit Dumraon and submit a report by 16.06.2009. This direction was issued through order dated 08.06.2009.

The respondent and other two members of the Committee proceeded to Dumraon on 16.06.2009 and submitted a report dated 6th July, 2009 on 09.07.2009. It was pointed out that the allegation that the paddy, to the extent of 12427.00 MT was purchased, is not true. They also furnished the facts and figures of the stocks of paddy, wheat and other commodities, in that report.

Alleging that there was serious lapse on the part of the respondent and other two officials in proceeding to the place at a belated stage and not making physical verification of the stock, chargesheet was issued to them by the disciplinary authority on 13.06.2011. It was alleged that the very purpose of sending a team of three officers was to find out the position on the spot, and on account of delay in proceeding to the place, and not visiting the godowns and verifying the relevant records, the Corporation was put to serious loss. The respondent and other two officials submitted their replies. Not satisfied with the same, the Corporation appointed an enquiry officer.

On the basis of the report submitted by the Enquiry



Officer, the disciplinary authority passed order dated 27.11.2012 imposing the punishment of dismissal from service and forfeiture of terminal benefits including gratuity. After exhausting the departmental remedies of appeal and review unsuccessfully, the respondent filed CWJC No.2945 of 2014 before this Court. He pleaded that the enquiry officer recorded a specific finding to the fact that the very allegation that 12427.00 MT of paddy was purchased on 30.05.2009, was found to be not true and though there was delay in communicating the order 08.06.2009, the disciplinary authority made baseless allegations in his chargesheet and passed the order of dismissal from service. Certain other grounds were also urged.

The Corporation opposed the writ petition by filing a counter affidavit. According to them, the respondent and other two officials were required to be very vigilant; and on account of their lapses on their part, serious irregularities at the purchase centre could not be noticed leading to huge loss to the Corporation.

The learned Single Judge allowed the writ petition and has set aside the order of dismissal from service. He took the view that once the enquiry officer recorded the findings belying the very basic allegation, there was absolutely no basis for the disciplinary authority to impose the highest punishment.

3. *The Manager (A/Cs)/ FCI,
District Office, Patna*
4. *The General Manager (Bihar)
FCI, Regional Office, Patna*
5. *PA/file, DO, Patna*

Endorsement thereon shows that it was signed on 10.06.2009 and was handed over to one of the officials on 11.06.2009. The team proceeded on 16.06.2009 and made certain verifications. On the basis of their observations, they submitted a report on 9th July, 2009, which reads as under:

Food Corporation of India

District Office, Patna

As per order of Area Manager under ref no.PAT/vig/(3) 2009 dated 8.06.2009 a committee consisting U.C. Roy, Manager (HQ), Jayant Kumar, Manager (CE) and Suman Bhai Patel, Manager (Q/C) visited PPC Dumraon on 16.6.09 to verify the purchase on 30.05.09.

On verification purchase register, purchase voucher and stock ledger, it is found that on 30.05.09 only 25.372 B/S=8.880-20-0 and on 31.5.09 only 23116 B/S=8090-60-0 have been purchased and the total bags 48488 B/S one kept in four godown as detail is attached. Total quantity purchased during May, 09 is 345.021 B/S 120.757-35-0. Total purchased on 30.05.09 and 31.5.09 are kept in the following godowns as stated by PPC Incharge.

- 1) Bhawan Mani Rice Mills Dumraon -- 3232 B/S*
- 2) Soni Rice Mill Bhojpur -- 7106 B/S*
- 3) Tower Campus Bhojpur -- 11.001 B/S*

4) *Roma Pali Enterprises, Bhojpur – 27.149 B/S*

Total 48488 B/S

The stock no. is not given in any godowns.

Photocopy of purchase made on 30.5.09 and 3.15.09.

The photocopy of master ledger for the month of May, 09 and photo copy of stock a/c are enclosed herewith.

Sd (Jayan Kumar) Sd/ (Suman Bhai Patel) Sd/ U.C. Roy
Manger CE Manger (Q/C) Manager HC

Submitted to
The Area Manager
Food Corporation of India
District Office, Patna.”

A perusal of this report suggests that information received by the Corporation that there was procurement of 12427.00 MT of paddy on 30.05.2009 is not correct. In addition to the report dated 06.07.2009, the team has also submitted another detailed report about the various irregularities that were taking place at the purchase centre. For example they pointed out that though the Incharge of the centre one Mr. U. K. Dubey was suspended on 30th May, 2009, the copy of the order was served only in the month of September, and that resulted in commission of huge irregularities. We are informed that Mr. Dubey has been dismissed from service after conducting enquiry, and that he is no more.

The Corporation thought it fit to initiate proceedings against the officers comprising of the team. Its grievance was two



fold. The first is that there was delay on the part of the team in proceeding to the paddy procurement centre, and the second is that the report was not on the basis of physical verification. A charge sheet was issued to all the three officials making two basic allegations, namely delay and the failure to make physical verification.

So far the delay is concerned, it is no doubt true that 16.06.2009 was fixed as a date, by which time the report must be submitted. The fact, however, remains that copy of the order was served upon one of the officials only on 11.06.2009 and naturally it will take some time for the three officials to coordinate and to proceed to the place.

Before the enquiry officer, voluminous material was placed in the form of oral and documentary evidence. The root cause of all these proceedings was that there was procurement of abnormal quantity of paddy on a particular day. As regards this, the enquiry officer made the following observation:

“9.9. While analyzing the charge of submission of fake, inconclusive and misleading report instead of going into the whole issue and pointing out to the irregularities, it is required to know what was the whole issue and what were the irregularities?”

The Competent Authority, who ordered for the investigation found the paddy procurement on



30.05.2009 was normal, satisfied and accepted the report and then forwarded the same to GM (Bihar). No adverse comment either from District Office or from Regional office level has been evidenced. The source of information about abnormal procurement of paddy on 30.05.09 is conspicuous by its absence. The 'whole issue' was, therefore, abnormal procurement which was not a fact and thus there was no irregularity in paddy procurement as on 30.05.09. The charge, therefore, fails. (Reference : Ext P/3, Cross-Exam of PW/1, COs Brief)''.

Further, the report dated 09.07.2009 submitted by the team was not found to be incorrect. Added to that, one cannot omit the fact that the team was on a very specific, short and brief mission, to find out whether there was procurement of 12427.00 MT of paddy on a single day. The report of the team that this allegation is not true is fortified by the finding in the departmental enquiry initiated against them. Therefore, the very basis for proceeding against the respondent turns out to be factually incorrect. What exactly was the nature of irregularity, that has taken place on the paddy procurement centre is not within the scope and ambit of the team of the three officials. It can be said without hesitation that undertaking of physical verification and submitting a report indicating the quantity of various commodities was not, in fact,

expected of them. They could have simply submitted a report stating that the very allegation as to the procurement of 12427.00 MT paddy was not correct. Still they have undertaken that task

The next charge against the respondent is about delay in proceeding to the site and submitting a report. Though the letter is dated 08.06.2009, it has been signed on 10.06.2009 and the copy thereof was served on one of the officials only on 11.06.2009. Naturally, it would take for the three officials hailing from different locations to co-ordinate, and to proceed to that place. It was not even mentioned that any serious irregularity has taken place on account of delay of few days. Further, the verification of the stock in various godowns needs assistance of local staff and large amount of time etc.

Things would have been different altogether, had it been a case of any irregularities about procurement had taken place on account of lapses on the part of the respondent or other two officials. The basis for proceeding against them was alleged lapse in noticing the discrepancy in procurement. Once that has been held to be not true, there does not exist any valid basis to punish the respondent, that too by imposing the highest punishment of dismissal from service, denying even the gratuity. However, we are of the view that the minor punishment in the form of withholding of

two increments would meet the ends of justice.

Hence, we partly allow the Letters Patent Appeal by modifying the order passed by the learned Single Judge to the effect that the order of punishment dated 27.11.2012 shall stand modified to the effect that the punishment of withholding of two increments shall be imposed against the respondent. In all other respects, the order passed in the writ petition shall stand.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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