

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1331 of 2012

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1. Praphul Kumar Singh S/O Late Govind Singh R/O Village - Kapasi, P.O. and P.S.- Karanday, District- Sheikhpura
2. Bambam Kumar S/O Sri Tulsi Singh R/O Village and P.O.- Belchhi, P.S.- Karanday, District- Sheikhpura

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna
3. The District Magistrate, Sheikhpura, District- Sheikhpura
4. The Deputy Development Commissioner, Sheikhpura, District- Sheikhpura
5. The Director, Accounts Administration & Self Employment, Sheikhpura
6. The Block Development Officer, Chewara, District- Sheikhpura
7. The Block Development Officer, Ariyari, District- Sheikhpura
8. The Block Development Officer, Ghat Kusumba, District- Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B. K.Mangalam, Adv.

For the Respondent/s : Mr. Amish Kumar Jha, A.C. to GP8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. S.B.K. Mangalam, learned counsel for the petitioners and Mr. Amish Kumar Jha, learned A.C. to AAG 8 for the State.

While the petitioner No.1 is aggrieved by the order bearing No. 2431 dated 19.12.2011 impugned at Annexure-12 an identical order is passed against the petitioner No.2 bearing No. 2430 also dated 19.12.2011 impugned at Annexure-13. The two petitioners are Panchayat Rojgar Sevaks posted in different Panchayats within Chewara Block in the district of Shekhpura. While petitioner No.1 is posted in Gram Panchayat Sanaiya, the petitioner no.2 is posted in the same capacity in Gram Panchayat, Bhadaushi. The two petitioners



along with five others were proceeded against for committing alleged irregularities in execution of Schemes and by the order bearing Memo No. 209 dated 30.1.2010, the services of these Panchayat Sevaks inclusive of the two petitioners whose name appeared at Serial Nos. 7 and 3 respectively, were terminated. Three of the seven Panchayat Sevaks came before this Court in C.W.J.C. No. 6360 of 2010 and a Bench of this Court taking note of the fact that the orders of termination had been passed in violation of the principles of natural justice, allowed the writ petition while granting liberty to the respondents to proceed afresh but in accordance with law.

The operative portion of the order of the Bench passed in the case of the three Panchayat Sevaks other than the present petitioners present at Annexure-7 runs as follows:

“.....The respondents are given liberty to issue individual notices to the petitioners in respect of the lapses which they claim as committed by the petitioners in their functioning as Panchayat Rozgar Sewaks and consider their individual show cause, if filed any, and thereafter only pass appropriate orders in accordance with law. Such notices shall be issued to the petitioners within a period of one month from the date of receipt/production of a copy of this order. The petitioners shall file their reply to the same within 15 days from receipt of the said notices and thereafter fresh orders shall be passed by the respondents in accordance with law, after considering the show cause of the petitioners, within one month from the date of receipt of show cause from the petitioners. In case, any of the petitioners does not file his show cause, it will be presumed that he is not interested in the matter and appropriate order shall be passed. The total process must come to an end within ten weeks from the date of receipt/production of a copy of this order, failing which the petitioners shall stand reinstated on their posts

and shall be entitled to their remuneration pursuant to their reengagement, vide Annexure-5.”



The judgment and order of this Court required the respondents to complete the process within a stipulated period failing which the petitioners of the said writ petition were to be reinstated on the post. The respondents failed to comply with the directions of the Court as present at Annexure-7 and as a consequence those three Panchayat Sevaks were reinstated vide order dated 8.9.2011 bearing C.W.J.C.No.1625 present at Annexure-8. The present petitioners came before this Court through C.W.J.C.No.18303 of 2011 and which writ petition was disposed of on 15.10.2011, on similar terms as C.W.J.C.No.6360 of 2010. A copy of the order dated 15.10.2011 is enclosed at Annexure-9. This time the respondents were vigilant and immediately served a show cause on the petitioners, copies of which is present at Annexures-10 and 10A dated 19.11.2011. The petitioners filed their respective explanation enclosed at Annexure-11 series and which was not found to be satisfactory resulting in upholding of the termination order dated 30.1.2010 earlier passed, vide the orders impugned bearing Memo No. 2431 and 2430 respectively dated 19.12.2011 impugned at Annexures- 12 and 13 respectively. The petitioners feeling aggrieved are before this Court.

The orders impugned have been questioned by Mr. Mangalam learned counsel for the petitioner as being discriminatory as well as on

grounds of being bereft of reasons. The orders are also questioned having been passed without consideration of the explanation given by the petitioners.

The arguments of Mr. Mangalam has been contested by Mr. Jha learned counsel to submit that even though the respondents did fail in ensuring compliance with the directions of this Court as present at Annexure-7, in so far as 3 of the 7 Panchayat Sevaks are concerned but having maintained the schedule stipulated in the order passed in the case of the present petitioner, the orders impugned would suffer no infirmity.

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

On identical charges that seven Panchayat Sevaks were proceeded inclusive of the present petitioners. Although the charges do border around irregularity in execution of the Scheme but there is no whisper in either of the charges whether any statutory procedure has been violated or the alleged violation has resulted in any misappropriation or defalcation of Government money.

A discussed explanation has been given by each of the two petitioners for each of the charges, copies of which is present at Annexure-11 series and even though the respondent District Magistrate, Sheikhpura has taken note of the explanation given by the two petitioners but the same has simply been rejected as being

unsatisfactory. The manner of rejection shows a complete non-application of mind by the District Magistrate, Sheikhpura for no reasons are assigned for rejecting the explanation given by the petitioner and the expression 'unsatisfactory' assigned by the District Magistrate, Sheikhpura for rejecting the explanation does not satisfy the requirements of assignment of the reasons.

Reference in this regard is made to the judgment of the Supreme court since reported in **(2010) 9 SCC 496 (Kranti Associates Private Limited vs. Masood Ahmed Khan and Others)** more particularly paragraph 47 which reads thus:-

“47. Summarizing the above discussion, this Court holds :

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

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- (i) Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
 - (j) Insistence on reason is a requirement for both judicial accountability and transparency.
 - (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
 - (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.
 - (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)
 - (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* EHRR, at 562 para 29 and *Anyia v. University of Oxford*, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
 - (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Even though thus, there may be some irregularity in the procedure adopted by the petitioner but until such time that the irregularity complained of is: (a) either a conscious disobedience; or (b) is found wanting on statutory procedures; or (c) has resulted in financial loss to the government; or (d) reflects a defalcation or

misappropriation of Government money or the likes, a mere irregularity simplicitor, may not be sufficient ground for award of an extreme penalty of dismissal. I say so because for identical accusations, whereas 3 of the 7 Panchayat Sevaks have been let off by the department without taking any steps to seek extension of the period for implementation of the order rather they were allowed to be reinstated in service but a different approach faces the petitioners. It is rather surprising that on identical accusations while the department has chosen to condone it to accommodate 3 of the 7 Panchayat Sevaks, but the petitioners were proceeded and terminated.

For the reasons so discussed above, the order of termination passed against the two petitioners bearing No. 209 dated 30.1.2010 as affirmed vide order bearing Memo No. 2431 and 2430 dated 19.12.2011 respectively can neither be upheld on merits nor on fair play and are accordingly quashed and set aside. The petitioners are reinstated to their post(s).

The writ petition is allowed.

Bibhash

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	21.10.16
Transmission Date	