

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13007 of 2016

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Md. Ata Karim son of Md. Muslim R/o Village - Birdipur, P.O. - Arai, Birdipur,
P.S. - Simri, District - Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Deputy Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
4. The Bihar State Food Commission, through its Member Secretary, Old Secretariat, Patna, Bihar.
5. Dr. Asmatullah Bukhari, son of late Abdul Barkat, resident of village Bari Ballia, Dakhini, P.S. Ballia, District Begusarai
6. Md. Salaam, son of late Md. Sammaudin, resident of village Dilawarpur, P.S. Munger, P.S. Kotwali, District Munger, currently Chairman of Bihar State Food Commission

.... Respondents

with

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Civil Writ Jurisdiction Case No. 12876 of 2016

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Dr. Asmatullah Bukhari Son of Late Abul Barkat, resident of Village Bari Balia, Dakhini, P.S Ballia, District Begusarai 851211.

.... Petitioner

Versus

1. The State of Bihar- through its Chief Secretary.
2. Secretary Department of Food & Consumer Protection, Government of Bihar, Patna- through its Secretary.
3. Secretary, Department of Food and Consumer Protection, Government of Bihar.
4. Joint Secretary, Department of Food and Consumer Protection, Government of Bihar.

.... Respondents

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Appearance :

(In CWJC No.13007 of 2016)

For the Petitioner/s : Mr. Ashish Giri, Adv.
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-4
For respondent no.5 : Mr. Abhimanyu Vatsa, Adv.
Mr. Sudhanshu Trivedi, Adv.
For respondent no.6 : Mr. Satish Kumar Sinha, Adv.

(In CWJC No.12876 of 2016)

For the Petitioner/s : Mr. Abhimanyu Vatsa, Adv.
Mr. Sudhanshu Trivedi, Adv.
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-08-2017

Re: C.W.J.C.No. 13007/2016

Heard Mr. Ashish Giri, learned counsel appearing for the petitioner, Mr. Upendra Pratap Singh, AC to SC-4, Mr. Abhimanyu Vatsa, learned counsel appearing for respondent no.5 and Mr. Satish Kumar Sinha, learned counsel appearing for respondent no.6.

The petitioner is aggrieved by the order bearing Memo No. 6918 dated 29.8.2015 passed by the State Government in its Food and Consumer Protection Department, whereby in exercise of power vested under Rule 8(3) of the Bihar State Food Commission Rules, 2014 (hereinafter referred to as 'the Rules') framed under section 16(1) of the National Food Security Act, 2013 (hereinafter referred to as 'the Act') the petitioner has been removed from the post of Chairman, Bihar State Food Commission.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission.

In the nature of the contest which engages this Court for the present, I do not deem it necessary to enter into the merits of contest for the order impugned, besides being questioned on merits by the petitioner, it is also challenged on grounds that it not only violates the statutory provisions underlying Section 16(10) of 'the Act' and the



Rules framed thereunder but also violates the principles of natural justice, inasmuch as there is absolute denial of reasonable opportunity to the petitioner who has been given 24 hours time to respond to the allegation as contained in the show cause dated 28.8.2015 issued under the signature of the Secretary, Food and Consumer Protection Department, impugned at Annexure 3 to the writ petition. Since the removal of the petitioner has resulted in the appointment of respondent no.5, Dr.Asmatullah Bukhari and who again has been removed to make way for the respondent no.6, Md. Salaam that both of them have been added as the party to the proceedings.

Mr. Abhimanyu Vatsa, learned counsel has appeared for respondent no.5 while respondent no.6 has registered appearance through Mr. Satish Kumar Sinha.

Mr. Giri, learned counsel appearing on behalf of the petitioner, has invited the attention of this Court to the statutory provisions underlying Section 16(9) of 'the Act' to submit that it is the State Government alone who has been empowered to remove the Chairperson or any member from office, on grounds so mentioned in the provision but with a rider at sub-section (10), that no such removal shall take place unless the incumbent has been given reasonable opportunity of being heard in the matter. Mr. Giri has referred to the show cause notice at Annexure 3 to submit that it is issued under the



signature of the Secretary and not the State Government and thus, the very initiation of removal is void at its inception. He submits that where power of removal under 'the Act' is vested in the State Government, it is the State Government alone, who has been empowered to issue a show cause notice on removal and since it is by an authority not empowered under 'the Act', the show cause notice is illegal and even if it is followed by the order of removal passed by the State Government, the defect is incurable. He further submits that the order is also not sustainable on grounds of denial of reasonable opportunity to the petitioner as mandated under Section 16(10) of 'the Act', inasmuch as a period of 24 hours is grossly insufficient where allegations are resting on financial irregularities and that also without supply of relevant papers. He submits that the proceeding is initiated with predetermined mind and even when the petitioner vide Annexure 4 prayed for ten days time together with request for supply of papers, this prayer has been treated as a response to the show cause to result in the impugned order at Annexure 5. Learned counsel has relied upon the judgment of the Supreme Court reported in **(2010) 13 SCC 427 (Oryx Fisheries Private Limited v. Union of India & ors.)** to submit that a predetermined show cause with denial of reasonable opportunity has become a matter of criticism by the Court(a) and yet the respondents have not bothered to correct themselves.



The argument of Mr. Giri though is contested by Mr. Singh, appearing for the State, but he has not been able to satisfy this Court on either of the issue so raised by Mr. Giri i.e. whether 24 hours period would constitute a reasonable opportunity or whether the show cause has the approval of the State.

Mr. Sinha, learned counsel appearing for the present incumbent to the post, has chosen to rely upon the judgment of the Supreme Court, a copy of which has been placed on record at Annexure 'F' to the counter affidavit of the State to submit that his appointment vide order dated 19.4.2014 impugned at Annexure 9 to C.W.J.C.No. 12876/2016, is by virtue of the Supreme Court order. In my opinion, the reliance is thoroughly misplaced for the judgment of the Supreme Court is in a completely different context. The Court on noticing that the post of a Chairman under 'the Act' was lying vacant since long, has issued direction for filling up the same. The direction is not in the present context.

Mr. Vatsa, learned counsel appearing for respondent no.5, while submitting that his appointment on the post vide order dated 1.9.2015 (Annexure 3 to C.W.J.C.No. 12876 of 2016) was following the removal of the writ petitioner, informs that even the respondent no.5 has been unceremoniously removed vide order dated 2.3.2016 (Annexure 8 to C.W.J.C.No. 12876 of 2016) and which has been put



to question in the writ petition being heard analogous.

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

Section 16(9) of 'the Act' leaves no room for confusion that it is the State Government alone who has the power of removal of the Chairperson or any Member, in the manner prescribed under subsection (10) which mandates a reasonable opportunity to be provided to the occupant, on the post. It is under the orders of this Court that the file has been produced and which again confirms that the initiation of the proceedings for removal of the petitioner does not have a sanction or approval of the State Government rather it is on the correspondence between the Secretary and the Minister In-charge that the process has been set in motion which is contrary to the statutory prescriptions underlying section 16 of 'the Act' for it is the State Government exclusively which has the power of removal. The records confirm that the Secretary has not even bothered to seek the approval of the Chief Minister as to whether any process needs to be initiated, in the circumstances discussed in the show cause, rather merely on seeking approval of the Minister In-charge that he has proceeded to issue show cause notice at his own level which does not qualify as an order of the State Government. The show cause thus not being issued by the State Government, the petitioner was under no obligation to



reply. To cap the arbitrariness, period of 24 hours is granted to the petitioner for reply. Where an extreme charge of financial irregularity is leveled on a person holding the post of Chairman, he needs to be given not only the papers supporting the charge but also a reasonable time to file response and 24 hours for the purpose is preposterous and certainly does not satisfy the obligation of grant of reasonable opportunity.

The show cause at Annexure 3 charges the petitioner with commission of financial irregularity in the matter of inviting tenders and allotment of contract to M/s Pratyush Enterprises. The petitioner prayed for documents supporting such allegations, but without discharging the obligation of supplying the documents supporting the allegation of financial irregularity that within 24 hours, the order of removal has been passed by the State Government which has been impugned at Annexure 5.

Although law stands well settled as to what would constitute a reasonable opportunity but for ready reference I would be referring to the opinion expressed by the Supreme Court at paragraphs 25, 26, 27 and 31 of the judgment in the case of **Oryx Fisheries Private Limited** (supra) to hold that not only the show cause notice is predetermined on the conclusion awaiting the petitioner rather the grant of 24 hours is a confirmation of this



predetermined opinion of the State Government on the removal of the petitioner:

“25. Expression like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India*, AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R.Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* (supra) held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based.”

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

31. It is of course true that the show cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it



is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.”

The charges are rather serious but then the removal on such ground has to be made by following the lawful procedure and not on the whims and fancies of the authority. The petitioner certainly was entitled to a reasonable opportunity to defend himself even if the charges revolved around financial irregularity and equal obligation is cast on the State Government to follow the law while taking a decision thereon.

For the reasons aforementioned, the order of removal of the petitioner passed by the State Government bearing Memo No. 6918 dated 29.8.2015 cannot be upheld being contrary to the stipulations present at Section 16(10) of ‘the Act’ read alongside Rule 8(4) of ‘the Rules’ and which is accordingly quashed and set aside. As a consequence the petitioner stands restored to his post.

Since the respondent no.5, who was appointed as a consequence of removal of the petitioner, also has been removed vide order passed on 2.3.2016 impugned in C.W.J.C.No. 12876 of 2016, his challenge to his removal shall abide by the order passed herein.

In so far as the appointment of respondent no.6 is concerned, vide order passed on 8.4.2017, this Court had directed that



any appointment made in the meanwhile shall abide by the outcome of this proceedings. Since the appointment of the respondent no.6 was made vide resolution dated 19.4.2017 impugned at Annexure 9 to C.W.J.C.No. 12876 of 2016, it shall abide by the interim order passed on 8.4.2017 which is hereby confirmed and accordingly, the appointment of respondent no. 6 is quashed and set aside.

The writ petition is allowed.

This order, however, would not preclude the State Government to move afresh but in accordance with law.

Let the records of the proceeding be returned to Mr. Upendra Pratap Singh for his custody.

Re: C.W.J.C.No. 12876/2016

In view of the order so passed in C.W.J.C.No. 13007/2016 the prayer of the petitioner in so far as it seeks reinstatement has lost its meaning because the petitioner Dr. Asmatullah Bukhari was occupying the post on removal of the petitioner Md. Ata Karim and since Md. Ata Karim has been restored to his post by virtue of the order passed by this Court, coupled with the fact that the petitioner of this case also has been removed on 2.3.2016, no interference is called for in the said order put to challenge herein.

Mr. Abhimanyu Vatsa, learned counsel appearing for Dr. Asmatullah Bukhari, appreciating the position next submits that the



petitioner would be entitled for salary attached to the post for the period he has served and that although necessary sanction has been granted by the department but it is not being followed up.

The Principal Secretary, Food and Consumer Department, would be well advised to consider the grievance of the petitioner regarding his pending salary and take effective steps for payment of the legitimate dues of Dr. Asmatullah Bukhari within a period of three months from the date of receipt/ production of a copy of this order.

C.W.J.C.No. 12876/2016 is accordingly disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2017
Transmission Date	NA

