

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4671 of 1998

Satya Narain Prasad, Son of Late Baldev Prasad, resident of Village Rais, P.S. Pandarak, District Patna.

... .. Petitioner/s

Versus

1. Bihar State Cooperative Marketing Union Limited through its Administrator, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
2. Administrator, Bihar State Cooperative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
3. Special officer (Administrator), Bihar State Cooperative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
4. Senior Regional Range Officer, Bihar State Cooperative Marketing Union Limited, Darbhanga
5. Range Officer, Bihar State Cooperative Marketing Union Limited, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Anshuman, Advocate Mr. Sanjay Kumar, Advocate Mr. Kuber Pathak, Advocate Mr. Baban Kumar Advocate,
For the Respondent/s	:	NONE

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-07-2019

This writ petition has been filed against the order of punishment issued by the Administrator of the Society Cooperative who was a State official discharging all duties and responsibilities of the cooperative society, as the Society was superseded. The administrator is an official of the State Government and orders passed by it are amenable to the writ jurisdiction.

This writ petition was filed in the year 1998, the order sheet reveals that on the very first date when the matter



was listed after serving the copy of this petition to the respondents counsel i.e. on 15.02.1999, none had appeared on behalf of the respondent/BISCOMAUN and the petitioner was required to serve a copy on another counsel who was said to be appeared in this case. On 22.02.1998, the counsel appearing for the respondent/BISCOMAUN had sought time for filing of the counter affidavit on 16.03.1999, the matter was heard and admitted for hearing. On that date none appeared for the respondent/BISCOMAUN. Matter was taken up on 26.11.2018, none appeared on behalf of the respondent/BISCOMAUN and fresh notice was issued on respondent/BISCOMAUN in the hearing matter by registered post as well as ordinary process. The notice thereafter was served and appearance was filed by the respondents' counsel recently on 18.04.2019.

Today again, when matter is taken up for final hearing, none is present on behalf of the respondent/BISCOMAUN.

The writ petition has been pending in this court since the year 1998. Now this case is more than 20 years old. Despite due notice and repeated service on the respondent/BISCOMAUN. Vakalatnama has been filed on 18.04.2019, however none appears to represent the



respondent/BISCOMAUN. This court would, thereafter, proceed to hear the counsel for the petitioner with a view to disposal of this case which has been occupying the file of this Court for the last about 21 years.

This court would also make a note that till date counter affidavit has also not been filed by the respondents.

The petitioner was posted as Assistant Depot Incharge at the Sale Centre at Khajauli in the district Madhubani. A charge memo was served on 24.01.1992. The allegations were in three folds; (i) misappropriation of fertilizers, (ii) deficiencies in stock of fertilizers at the time of handing over charge and (iii) that one Shiv Kumar Chowdhary who had license to deal in fertilizer was lifting fertilizer on the basis of forged credit memos. Since the credit was being extended to the said Chowdhary on the basis of forged credit memo, the society, later could not release the amount from Mr. Chowdhary. It is alleged that the petitioner was facilitating lifting by the said credit memos for his personal gain at the cost of the respondents Society.

The petitioner, on been proceeded against on the basis of charge memo, made a request for some documents. Counsel for the petitioner submits that the documents were



relevant for his defence but the same were not supplied to him. The petitioner has submitted his response by way of written statement. In response to the charge memo on 15.10.1993, the petitioner has brought to the notice of the authorities the fact that as far back as on 15.12.1999 he had intimated the authorities including the administrator of the society that the said Shri Chaudhary had been lifting fertilizer by submitting forged credit memo since 1989 itself and the petitioner had discovered 7 forged credit memos from the said Shri Chaudhary. The petitioner had intimated the authorities so that action be taken against the said Chaudhary, but no such action has been taken by the Authorities. The petitioner had also lodged Khajauli P.S. Case No. 32 of 1990 against the said Shri Chaudhary and therefore petitioner has exercised due diligence and is in no way responsible for the allegation made against him.

Perusal of the charge memo reveals that the alleged sale by submission of forged credit memos are of in relation to the year 1988 and prior to 15.12.1988.

Much prior to the charge memo, as per sequence of events emerging from the uncontroverted averments made in the writ petition, it is obvious that there is no scope for any



doubt which has been made the basis of the charge against the petitioner that he was in collusion with the said Mr. Chaudhary. The conduct of the petitioner clearly suggests that he has exercised due diligence.

Charges, however, were not challenged by the petitioner, therefore the validity of the procedure pursuant to which petitioner has been visited with the severe consequences of dismissal has to be examined by this court in the instant proceedings.

The demand of documents made by the petitioner is also not relevant as he has chosen to file his written statement of defence in response to the charge memo on 15.10.1993. In the circumstances, this court would confine its scrutiny to the process adopted in the course of the inquiry by the Inquiry Officer. Whether the same violates principles of natural justice and the settled law with regard to procedure to be adopted in a departmental inquiry falls for consideration in the instant case.

The report of the Inquiry Officer is part of the second show cause notice dated 13.02.1995 issued to the petitioner (Annexure-20).

Bare perusal of the same shows that there is no reference to any submission advanced on behalf of the



department by any Presenting Officer. The inquiry report is clearly indicative of the fact that the Inquiry Officer himself has considered the allegations. Statement of one Auditor in the proceedings has been relied upon. Statement of the auditor however could not be used to sustain the charges and as he had not supported the charge of misappropriation of Rs. 4,56,382.90/-. The auditor had merely stated that the auditor's report reflected a loss of Rs. 2,30,261.50/-. Even statement of the sole witnesses i.e. auditor was by no stretch of imagination supporting the charge of defalcation and misappropriation of an amount of Rs. 4,56,382.90/-.

No other document or witness has been presented by any Presenting Officer in the proceedings. The procedure adopted by the Inquiry Officer in holding charges proved without there being any of the Presenting Officer to present the case of the department and by himself, discharging the functions of the Presenting Officer amounts to unfair procedure adopted by the Inquiry Officer. The Inquiry Officer performing a quasi judicial function, is required to maintain a high degree of fairness. He cannot proceed in the inquiry as an agent of the department, as has been done in the instant case. The law in this regard has been settled by the Apex Court in the case of *State*



of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, wherein the Hon'ble Supreme Court has clearly held that such action of the Inquiry Officer in absence of any Presenting Officer is unsustainable and illegal. The specific case of the petitioner in the writ petition is that even the sole witness, i.e., Senior Auditor, namely, Madhukant Jha was released after recording his deposition. The petitioner was not even allowed to cross-examine the said senior auditor and no documents was made available to the petitioner in the entire course of proceedings. These facts are evident also from the Inquiry report dated 22.11.1994.

Further submission advanced by the petitioner's counsel is that the department had also subjected the petitioner to criminal proceeding in respect of the same charges by lodging an F.I.R. bearing Khajoli P.S. Case no. 108 of 1991 by the Society against the petitioner. He has annexed the copy of the order passed by the Sub Divisional Judicial Magistrate in the said case, wherein the charges have not been established in the criminal trial. The petitioner has been acquitted by the criminal court also which was for the same set of charges and on the basis of the same evidence which was the basis of proceedings in the departmental inquiry. The entire proceeding against the



petitioner being contrary to the settled principle of natural justice; and for the reasons indicated herein above order of punishment stands vitiated on account of illegal and unfair procedure adopted in the inquiry. The order of punishment dated 26.02.1998 terminating the petitioner with immediate effect stands quashed.

The court is now faced with the issue as to what would be the consequential relief to which the petitioner is entitled to. Admittedly, petitioner has crossed his age of retirement long back.

Counsel for the petitioner submits that pensionary/retiral benefit was subject to the option of the employee of the society. What kind of retiral dues the petitioner opted for is not before this Court.

In the facts and circumstances and since order of punishment has been quashed, this court would observe that the petitioner should now be left in peace and consequential retiral benefits admissible to the petitioner be paid to him. The petitioner has illegally been prevented from working in the period between his suspension in February 1990 till issuance of the order of punishment on 26.02.1998. This court considering the facts would observe that ends of justice would be served by



paying the petitioner 50 percent of his salary for the said period.

The writ petition stands allowed.

(Madhuresh Prasad, J)

Rahul/
S. Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2019
Transmission Date	NA

