

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15019 of 2019

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Shiv Bhola Shankar Son of Krishna Thakur Resident of Mohalla- Hasan
Chak, Lalbag, P.S.- Darbhanga Town, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.
2. The Regional Director Health Services, Darbhanga Division, Darbhanga.
3. The Commissioner Darbhanga Division, Darbhanga.
4. The District Magistrate cum Chairman District Health Society, Darbhanga.
5. The Civil Surgeon cum Secretary District Health Society, Darbhanga.
6. The In- Charge, Deputy Superintendent Sub- Divisional Hospital, Benipur, Darbhanga.
7. The In-Charge Medical Officer Primary Health Centre, Baheri, Darbhanga.
8. The In- Charge Medical Officer PHC Bahadurpur, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyavrat Verma, Advocate Mr. Shashank Chandra, Advocate Mr. Vatsal Verma, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar (SC-12) Mr. Kamlesh Kumar, AC to SC-

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 30-07-2019

Heard the learned counsel for the petitioner and the
State.



The petitioner has challenged the order dated 28.06.2019 contained in Memo No. 1142/DHS/19 issued under the signature of District Magistrate-cum-Chairman, District Health Society, Darbhanga, whereby the contractual appointment of the petitioner as Block Accountant has been done away with and the contract has been terminated on the ground of financial irregularities.

The charges which have been levelled against the petitioner were tried to be explained. The major charge against the petitioner is of a mismatch in the Bank statement and the actual account indicating that resolution of the Bank account was not done at proper intervals.

It was also found that some of the cheques / advice of the Bank was kept by the petitioner in his custody even though he was transferred to a different place on a different assignment. In all the allegations, it has been asserted by the learned counsel for the petitioner, there is no charge of any financial embezzlement.



Mr. Satyavrat Verma, learned Advocate further submits that the order impugned does not take into account the explanation offered by the petitioner against such charge. The late encashment of the cheques by the beneficiaries cannot be attributed to the petitioner. It can be understood that there has been some delay in the disbursal of the cheques, but even after the disbursal, such beneficiaries did not encash the aforesaid cheques in time. The culpability, therefore, cannot be squarely thrust upon the petitioner who was the then Block Accountant.

The petitioner, it has been submitted, was given barely 48 hours to explain his cause but even then the petitioner tried to explain everything.

The explanation of the petitioner, it has been reiterated, has not at all been taken into account, otherwise, the order of termination of the contract of the petitioner would not have been passed.

The enquiry which was held by a Committee was initiated in the event of death of a person by drowning in



the Block. Even during that enquiry, no opportunity was provided to the petitioner to explain the lapses which apparently was found out by the enquiry team.

It has also been submitted that in the enquiry before the Lokayukta which has led to a tertiary enquiry in the conduct of the Block when the petitioner was posted as a Block Accountant, the petitioner was never noticed or heard.

In any view of the matter, the order is sought to be challenged primarily on the ground of the same being non-speaking. The other ground of challenge is that by the same order, another functionary of the Block, namely, the Block Manager who was also subjected to the same treatment, namely, termination of contract, which order with respect to the aforesaid person has been set aside for the order being non-speaking and the case has been remitted to the District Magistrate-cum-Chairman of the District Health Society, Darbhanga for writing out a fresh order in accordance with law.



For the order impugned in the present petition to be completely non-speaking, it is difficult to sustain the same.

Times without number, this Court as well as the Apex Court has held that the reasons in an order is the life button and in case the same is taken away, the order becomes life-less. Various expressions have been used by various Courts of law in emphasizing the importance of reasons in an order. The order is required to be an informed one for it serves two purposes namely (a) it prevents the authority entrusted with the power of passing an order to eschew from displaying any arbitrariness in deciding an issue and secondly (b) the person who is adversely affected knows why such an order has been passed and ultimately if such an order is amenable to judicial scrutiny, a Court of law also would be in a better position to know where the author of such order has faulted.



In a recent judgement of Supreme Court in ***Central Board of Trustees Versus M/s Indore Composite Pvt. Ltd. [(2018) 3 PLJR 380 (SC)]***, the Supreme Court in paragraphs 14 and 15 has held as under:

"14. Indeed, in the absence of any application of judicial mind to the factual and legal controversy involved in the appeal and without there bring any discussion, appreciation, reasoning and categorical findings on the issues and why the findings impugned in the writ petition deserve to be upheld or reversed, while dealing with the arguments of the parties in the light of legal principles applicable to the case, it is difficult for this Court to sustain such order of the Division Bench. The only expression used by the Division Bench in disposing of the appeal is "on due consideration". It is not clear to us as to what was that due consideration which persuaded the Division Bench to dispose of the writ petition because we find that in the earlier paras only facts are set out.

15. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings on all the issues arising in the



case and urged by the learned counsel for the parties in support of its conclusion. It is really unfortunate that the Division Bench failed to keep in mind these principles while disposing of the writ petition. Such order, in our view, has undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost. We can never countenance the manner in which such order was passed by the High Court which has compelled us to remand the matter to the High Court for deciding the writ petition a fresh on merits.”

For the aforesaid reasons as also taking into account the order passed by this Court on 16.07.2019 in C.W.J.C. No. 14065 of 2019, the order impugned is set aside with respect to the petitioner.

The matter is remitted to the District Magistrate-cum-Chairman, District Health Society, Darbhanga (Respondent No. 4) to write out a fresh order in accordance with law. It would be in the interest of justice that a fresh opportunity be given to the petitioner to explain his cause. The order shall be passed within a period of six weeks from the date of production/communication of a copy of this order.



The petition stands allowed to the extent indicated
above.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	01.08.2019
Transmission Date	

