

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5241 of 2018

Sanjay Kumar Gwalia, Son of Sri Ramdas Rabidas, Resident of Flat no. 206,
Block- A, Mundeshwari Enclave Apartment, Akashbani Road, Khajpura, P.S.-
Rajiv Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Prohibition, Excise and Registration,
Bihar, Patna.
3. The Commissioner-cum-Inspector General of Registration, Department of
Prohibition, Excise and Registration, Bihar, Patna
4. The Special Secretary, Department of Prohibition, Excise and Registration,
Bihar, Patna.
5. The Assistant Inspector General-cum-Enquiry Officer, Department of
Prohibition, Excise and Registration, Bihar, Patna
6. The District Sub-Registrar, Katihar-cum-Presenting Officer, Katihar.
7. The District Magistrate, Katihar.
8. The Secretary, Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siyaram Sahi, Advocate Mr. Indu Bhushan, Advocate
For the Respondent/s	:	Mr. Manish Dhari Singh, AC to AG
For the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kr. Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 23-03-2021

Heard learned counsel for the petitioner and the
respondents.

2. The petitioner is aggrieved by the order imposing
punishment of stoppage of four increments with cumulative effect
vide Memo No. 4911 dated 11.12.2017 (Annexure-9).



3. Mr. Siyaram Sahi, learned counsel for the petitioner submits that the **charges levelled against the petitioner has not been proved beyond all reasonable doubts, hence the punishment of stoppage of four increment with cumulative effect is unsustainable.** (Emphasis supplied)

4. It is to be noted here that in Departmental proceeding, standard of proof is preponderance of probability and not beyond all reasonable doubts.

5. The background of the proceeding against this petitioner is that the Apex Court on 08.05.2014 in S.L.P. No. 5249 of 2014 issued specific direction copy whereof was provided to the District Magistrate, Katihar on 26.06.2014. The same was also intimated to this petitioner, who was the then District Sub-Registrar, Katihar.

6. The petitioner being the District Sub-Registrar, Katihar claimed that he is not the party in SLP and, therefore, the direction issued by the Apex Court is not binding. He sought an opinion from the Government Pleader, Katihar and thereafter he admitted the document for registration notwithstanding the direction issued by the Apex Court. This petitioner was proceeded against in Contempt proceeding being Contempt Petition (Civil)



No. 338 of 2014 (Ghanshyam Sarda Vs. Sashikant Jha, Director, M/s J. K. Jute Mills Co. Ltd. & Ors.).

7. The Apex Court considered the culpability of the petitioner and others. The part of the decision of the Apex Court in Contempt proceeding at para 9 (9), para. 12 and 21 of the judgment is relevant for this case and as such it is quoted herein below:

“9.(9.) The counsel for the Petitioner by his letter dated 10.06.2014 was sent to Contemnor No.11 with a copy endorsed to Contemnor Nos.9,12,13 and to Registrar of Assurance, Katihar and to the Chief Minister and a letter dated 13.06.2014 was sent by the counsel for the petitioner to Contemnor Nos.9,11,12 and to the Finance Minister, Chief Secretary and Asstt. I.G. of Registration and all of them given full and complete knowledge of the orders dated 08.05.2014 passed by this Hon’ble Court but all of them and in particular Contemnor Nos.9, 11, 12 and 13 showed scant regard to the same and did not take any steps to restrain the sale and transfer and registration of the Katihar capital asset of the Contemnor No.1 Company. Rather, the Contemnor Nos.9 to 13 showed scant regards to the orders dated 08.05.2014 passed by this Hon’ble Court and facilitated the sale, transfer and registration of the Katihar capital asset of the Contemnor No.1 Company in conspiracy and collusion with Contemnor Nos.2 to 8 and Contemnor Nos.14 to 18 have become parties to the present Contempt Petition.

12. ... However, despite such letter the Sale Deed was registered on 02.07.2014 whereafter charges were framed against District Sub-Registrar, Katihar and Circle Officer,



Katihar for disobeying the order passed by this Court on 08.05.2014. In his reply alleged Contemnor No.11, Sanjay Kumar Gwalia, District Sub-Registrar, Katihar submitted that he was not a party to the proceedings before this Court, that he was bound to act under the provisions of the Registration Act in connection with registration of documents. He further submitted that in view of the prevalent opinion from the office of the Advocate General, Bihar that the Registering Authorities, if not parties to the proceedings, are bound to register documents submitted for registration, he had sought opinion of the Government Pleader on 30.06.2014. The opinion was thereafter given by the Government Pleader, Katihar on 01.07.2014 that the documents could be registered, whereafter the Sale Deed was registered on 02.07.2014....”

21. We now turn to the involvement of those officials concerned with registration, who went ahead and registered the document on 02.07.2014 despite having been put to notice and served with a copy of the Order of 08.05.2014. Our attention has been invited to the opinion rendered by the office of the Advocate General, Bihar to the effect that even if there be any order passed by a civil court in connection with a private dispute between the parties, the registering authorities are bound to register a document presented for registration. This opinion was relied upon by the Government Advocate who then opined that the document in the present case could be registered. The request was allegedly made on 30.06.2014 and the opinion of the Government Advocate was promptly given on 01.07.2014. There is no register maintained diarizing the inward and outward letters and prima facie the entire theory appears to be suspicious and designed to confer a favour. However, since



these are government servants, we grant them benefit of doubt and would only caution them. It is shocking that an order passed by this Court, in the face of the provisions of Article 142 of the Constitution, could be ignored or disregarded by the officials who went ahead and registered the document. However, we do not find sufficient grounds to invoke our Contempt Jurisdiction to punish them for violation of the Order of 08.05.2014.”

8. Vide Annexure-1 to the writ application “Prapatra-Ka” was framed against the petitioner and served to him and he was subjected to departmental proceeding.

9. Learned counsel for the petitioner submits that the departmental proceeding was conducted in most unfair and bias manner and the charges were not established as per the norms and standard of departmental proceeding, particularly, the provision of the procedure safeguarded in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. He further submits that the enquiry officer was submitted report and recommended for minor punishment, but ultimately the petitioner has been inflicted major punishment in the nature of stoppage of four annual increment with cumulative effect.

10. Mr. Sahi, learned counsel for the petitioner submits that the petitioner was punished for alleged defiance of the direction issued by the Apex Court, but in the contempt proceeding, the Apex Court has declined to initiate contempt



proceeding and as such the action of the respondents imposing major punishment is uncalled for.

11. Mr. Sahi submits that the infirmity committed by the respondents after the enquiry report suffers from the vice of non-application of mind. He further submits that the respondents have not applied mind to the materials available on record and inflicted punishment, as benefit of doubt was given by the Apex Court. The Court finds substance in the submission of Mr. Sahi that the explanation furnished by the petitioner was not properly considered by the respondents while inflicting punishment.

12. On going through the entire materials available on record, the Court finds that there are certain procedural irregularity in conduct of the departmental proceeding, particularly after the stage of second show-cause notice as the respondents have not objectively considered the reply to the second show-cause notice in proper perspective and, therefore, the decision to inflict punishment cannot sustain. Accordingly, the Court is constrained to allow the writ application for the infirmity in inflicting major punishment and consequently Annexure-9 cannot sustain and is hereby quashed. However, in view of the judgment of the Constitution Bench in the case of **Managing Director, ECIL, Hyderabad v. B. Karunakar**, reported in (1993) 4 SCC 727, the



matter is remitted back for decision afresh for de-novo enquiry against the petitioner from the stage of second show-cause notice.

13. In the facts and circumstances of the case, the matter is remitted back to the disciplinary authority, who shall give fresh second show-cause notice and after opportunity of hearing to the petitioner pass appropriate order on the issue of quantum of punishment considering the fact that the petitioner being the Sub-Registrar has admitted registration of the document. While taking decision in the departmental proceeding, the respondents have to draw the distinction between contempt and misconduct. The respondents are hereby directed to take appropriate decision afresh in accordance with law within a maximum period of four months from the date of receipt/production of a copy of this order.

14. Before parting with, the Court deem it fit and proper to remind the authority that matter involving defiance of the direction issued by the Apex Court should not be taken leniently, irrespective of the fact that contempt proceeding was dropped extending the benefit of doubt. The standard of proof in a departmental proceeding is preponderance of probability, whereas in contempt proceeding the Court is required to see whether there is deliberate and willful disobedience of the direction of the Court. The observation of the Apex Court is indicative of the fact that the



Court has not fully exonerated the petitioner, the Apex Court held out that it does not constitute willful defiance constituting contempt.

(Anil Kumar Upadhyay, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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