

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9891 of 2022

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Awadhesh Pandey Son of Late Jay Nandan Pandey R/o-Mohalla- Near Last Transformer, Jagdev Nagar, Anaith Ara, P.O. and P.S.- Arrah, District-Bhojpur, Bihar- 802301.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary, Management Cell, Water Resources Department, Irrigation Department, Bihar, Patna.
4. The Chief Engineer, Flood Control and Drainage Patna, Water Resources Department, Government of Bihar, Patna.
5. The Executive Engineer, Planning and Monitoring Division, Anisabad, Patna.
6. The Executive Engineer, Head Works Division, Blamikinagar,
7. The Accountant General (A and E) Bihar, Patna.
8. The Senior Accounts Officer, Bihar, Patna.
9. The Treasury Officer, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Advocate.
For the Respondent/s : Mr. Sanjay Kumar (AC to AAG4)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-11-2022

Heard Mr. Alok Ranjan, learned counsel for the petitioner and Mr. Sanjay Kumar (AC to AAG4) for the State.

2. The petitioner seeks quashing of the letter No.367, dated 07.09.2020, issued under the signature of Executive Engineer, Planning and Monitoring Division, Anisabad, Patna, whereby the petitioner has been directed to deposit an amount of Rs.1,41,139/- and the aforesaid communication has been made to



the Accountant General to make recovery from the pension of the petitioner. Petitioner further seeks quashing of letter as contained in memo no. Pen 8-1671 dated 28.01.2021, whereby direction has been issued to the Treasury officer to deduct the amount of Rs.1,41,139/-.

3. The submission of the petitioner is in narrow compass that before issuance of the impugned order as contained in Annexure 1 dated 07.09.2020 and Annexure 4 dated 28.01.2021, causing civil as well as evil consequences, no opportunity or any show cause notice has been issued. He further submits that though the petitioner had filed a representation to consider his case in the light of the defence taken in his representation as contained in Annexure-2, but the same has not been considered and as such the petitioner left with no option but to approach this court.

4. On the other hand learned counsel for the State vehemently opposed the contention of the petitioner and submits that from the record it is evident that the petitioner unauthorizedly occupied the quarter and at the same time received house rent allowance for the same and the very act of the petitioner amounts to misconduct, hence, considering the unauthorized occupation of the quarter in question, order of recovery has been passed in accordance with law.



5. Before coming to the final conclusion, it would be apt and proper to observe that it is true that the distinction between Judicial Act and Administrative Act has withered away and the principles of natural justice are now applied even to administrative orders which involve the civil consequences, as held by the Hon'ble Supreme Court in the case of State of Orissa vs Dr. (Miss) Binapani Dei & Ors, since reported in 1967 SCR (2) 625. What is a civil consequence has been answered by the Hon'ble Supreme Court in the case of Mohinder Singh Gill & Anr Vs. The Chief Election Commissioner, New Delhi & Ors., reported in (1978) 3 SCR 272 wherein Krishna Iyer, J. speaking for the Constitution Bench observed:

“But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

6. The question is whether the principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of



natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. Reliance may be taken of the judgment rendered by the Hon'ble Supreme Court in the case of Union of India & Ors vs E.G. Nambudiri, reported in AIR 1991 S.C. 1216.

7. From the aforesaid settled legal proposition, it is manifestly clear that even an administrative order, which involves civil consequences, has to be passed consistently with the rule of natural justice.

8. Now coming to the facts of this case, from the impugned order, it appears that neither any show-cause notice nor any opportunity has been given to the petitioner before passing the impugned order and on this score alone, this Court finds that the order is not sustainable in law. Hence, the impugned order dated 07.09.2020 is hereby set aside, and the matter is remanded back to the Executive Engineer, Planning and Monitoring Division, Anisabad, Patna (Respondent No.5) to consider the representation



of the petitioner as contained in Annexure-2 to the writ application and pass a fresh order in accordance with law taking into consideration the defence, which has also been taken in the present writ application.

9. Accordingly, the present writ application stands disposed of with the aforesaid observations.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2022
Transmission Date	NA

