

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.71 of 2021

In

Civil Writ Jurisdiction Case No.9252 of 2000

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1. The State of Bihar.
 2. The Secretary, Water Resources Department, Government of Bihar, Patna.
 3. The Special Secretary, Water Resources Department, Government of Bihar, Patna.
 4. The Deputy Secretary, Water Resources Department Government of Bihar, Patna.

... .. Appellant/s

Versus

Ravindra Thakur Son of Late Rasdhari Thakur, resident of A-3, Vijay Nagar, Rasbihari Path, Patna - 800014.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Prasad, Advocate
Mr. Anjani Kumar, AAG 4
For the Respondent/s : Mr. Arun Kumar

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-08-2022

Heard learned counsels for the respective parties.

2. The present appeal is against the order of the learned Single Judge dated 28.06.2019 passed in C.W.J.C. No. 9252 of 2000. Respondent while working as Assistant Engineer was subjected to disciplinary proceedings and it was concluded in imposition of the following penalties:

“Shri Ravinder Thakur, Former Assistant Engineer, Master Planning, Investigation Division, Jhanjharpur, presently suspended due to irregularities in



Home Construction Society, Bailey Road , Patna in Danapur P.S. FIR No 336/1994 and Departmental proceeding was initiated due to gross violation of norms of Bihar Servant Conduct Rule vide Departmental Order No 379 dated 30-11-1996.

In departmental proceeding, the conducting officer found allegations against the Assistant Engineer Shri Thakur to be true. He further recommended to act sympathetically. Enquiry report was examined by the government and following punishment was awarded to Shri Thakur.

1. According to Bihar Servant Conduct Rule, 16 (3), permission was not sought by Shri Thakur who assumed charge of Chairman and Secretary of Engineers Home Construction Society, Bailed Road, Patna. Shri Thakur had worked at this post from 07-02-1980 to 02-07-1989. According to Letter issued by Registrar Cooperative Societies, Patna an audit report was incomplete and irregularities in conduct of the society.

2. FIR No 336/94 was lodged in Danapur P.S. against Shri Thakur acting as Secretary of the Engineer Home Construction Society. During 29-11-1994 to 05-12-1994 Shri Thakur was in prison but he did not inform the department.

3. The Committee formed was not solely for engineer members but for general members also. So this is a commercial institution.

4. Members signed on the bye laws of the Society in capacity of General person instead of engineer members.

Following punishments was awarded to Shri Thakur for proved allegations :

I) Shri Thakur will get lowest pay scale of Assistant Engineer.

II) Shri Thakur will be posted outside of Patna and no flood duty is assigned to him.

III) Shri Thakur will get only subsistence allowance during suspension period.



With above decisions, Second show cause was issued vide Letter No 1375 dated 21-06-1999 to Shri Thakur. After consideration of the response of second show cause received from Shri Thakur following irregularities were proved against him.

" A) No permission was sought by Shri Thakur after he assumed the post of Chairman and Secretary (07-02-1980 to 02-07-1989) of the Engineer Home Construction Society Limited Bailey Road, Patna from the government. Shri Thakur should have obtained permission under Rule 16 (3) of Government Servant Conduct Rule. It is crystal clear from the report of the Registrar Cooperative Societies, Patna, the audit report and irregularities was possible in the Engineer Home Construction Society Limited, Bailey Road, Patna. It is claimed by Shri Thakur that, it was not mandatory to seek permission from the department for being the Member of the society. There was a permission for being the Member of the Housing Cooperative.

B) During 29-11-1994 to 05-12-1994 Shri Thakur was in prison in Danapur P.S. FIR No 336 / 1994 as accused which shows the gross irregularities.

For above mentioned proved allegations, Government imposed the following punishment against Shri Thakur.

i) Censor, during year 1994-1995.

ii) With holding one increment of pay with cumulative effect.

iii) Suspension of Shri Thakur was revoked and it was decided that he will get only subsistence allowance during suspension period, but that very period will be calculated for pension purpose. Shri Thakur will get increment during this suspension period and Shri Thakur will report to headquarter.

These punishments have been communicated to Shri Thakur.”

3. Thereafter, the disciplinary authority found that imposition of the aforesaid penalties is not in accordance with law



and proceeded to pass a corrected order on 04.08.2000. Both the orders were subject matter in the aforesaid writ petition.

4. Perusal of orders dated 08.07.2000 and 04.08.2000, it is crystal clear that the same are not speaking and reasoned orders for the reasons that even though second show cause notice along with inquiring officer's report was furnished to the respondent on 21.06.1999 and he had submitted his explanation on 15.10.1999. However, each of the contentions raised by him in the explanation has not been considered. In other words, the object of providing second show cause notice along with inquiring officer's report is defeated in the event of disciplinary authority in not considering the explanation of the respondent *vide* his communication dated 15.10.1999.

5. Learned Single Judge has taken note of Apex Court's decision passed in the case of ***Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others*** reported in **(2010) 9 Supreme Court Case page 496**. That apart Apex Court in the case of ***ORYX Fisheries Private Limited vs. Union of India and Others*** reported in **(2010) 13 Supreme Court Cases 427** held as under:

40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below : (SCC pp. 510-12)



“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.



(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of *Strasbourg Jurisprudence*. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'.

6. The disciplinary authority is exercising quasi-judicial functions under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 while imposing punishment. In such an event, order must be a reasoned order as his or her order in respect of imposition of punishment is a subject matter of judicial review. Therefore, the disciplinary authority mind is required to be disclosed in the order how each and every contention has been considered. In the light of these facts and



circumstances, the appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 28.06.2019 passed in C.W.J.C. No. 9252 of 2000.

7. Accordingly, L.P.A. No. 71 of 2021 stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
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