IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8302 of 2020

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Dudh Nath Ram, aged about 60 years, Male, Son of Late Bhola Ram, R/o Rajendra Nagar, Ward No.-21, P.S.- Gopalganj, District-Gopalganj

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Planning and Development Department, Bihar.
2. The Joint Secretary, Planning and Development Department, Bihar.
3. The Deputy Director, Planning and Development Department, Bihar.
4. The Finance Department, Bihar.
5. The District Magistrate, Gopalganj.
6. District Planning Officer, Gopalganj.
7. The Account General, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Rahi, Advocate

For the Respondent/s : Mr. Binay Kumar Pandey, A.C to G.A-2

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-06-2023

Heard Mr. Alok Kumar Rahi, learned counsel appearing on behalf of the petitioner and Mr. Binay Kumar Pandey, learned A.C. to G.A-2.

2. The petitioner’s case is that, Rs. 7,00,664/- has been withheld vide Letter No. 332 dated 28.01.2021 from unutilized leave salary of the petitioner for his alleged failure. T.D.S. is to be deducted at a specified rate on the payments made to the supplier of taxable goods and

services, which was not deposited by the petitioner in government treasury as per provision of the Bihar Value Added Tax Act, 2005, which caused loss of Rs. 7,00,664/- to the Government.

3. The Planning and Development Department, Bihar, was required to file return being dealer in terms of sub-Section (I) of Section 2 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the ‘VAT’) and as such, compulsory return is required to be filed by the department in accordance with Section 16 of the Act, in accordance with the provision of the VAT Act.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was working in the capacity of District Planning Officer under the Department of Planning and Development, Government of Bihar, Patna and he superannuated from the post on 31.01.2020, having rendered 30 years of service in the concerned department. The petitioner has no knowledge of tax.

5. In compliance to the letter no. 4941 dated 18.11.2019 issued under the signature of Joint Secretary, Planning and Development Department, Bihar, the

petitioner submitted all the requisite documents on 30.11.2019 vide letter no. 945 and filled up the pension papers.

6. The petitioner working in the capacity of District Planning Officer has received payments on account of GPF and Group Insurance on 02.02.2020 but he has been denied earned leave of 300 days, gratuity and pension has also not been fixed till date. Vide Memo No. 1593 dated 19.02.2020, the Accountant General, Bihar made request to the Deputy Directors, Planning and Development Department, Bihar to sanction the pension fixation papers and other payments and inform accordingly so that P.P.O and payment orders may be released. It is submitted that during the pendency of the present writ application vide Memo No. 332 dated 28.01.2021 present Joint Secretary, Planning and Development Department, Bihar directed to deduct Rs.7,00,664/- from the amount of Earned Leave payable to the petitioner. It has also been mentioned in Clause 3 of Memo No. 332 dated 28.01.2021 that the amount so deducted will be refunded back to the petitioner in case the petitioner or the office itself produces evidence

in support of the T.D.S. deducted from the supplier. It is further submitted that the defect as pointed out must not have entailed penal action for any irregularity which can be rectified as per the provision of the VAT Act, 2005.

7. The petitioner made representation before the respondent authorities vide Letter No. 01 and 02 dated 10.05.2020 and 03.06.2020 respectively, so that the payment of his retiral benefits could be made expeditiously.

8. The petitioner is aggrieved by the action of the respondent that recovery has been made without giving any show cause or any information with regard to such deduction which is a blatant violation of the principle of natural justice.

9. *Per contra*, learned counsel appearing on behalf of the State submitted that it was mandatory for the person working in the department concerned to deduct the amount of TDS and VAT before making payment to the supplier against the goods supplied under District Innovation Fund. The petitioner did not abide by the said mandate and made payment to the supplier of generator without deducting the amount of TDS and VAT under the Navachar Yojna. It is

further submitted that the District Magistrate, Gopalganj reported financial irregularity in Navachar Yojna(Innovation Scheme) to the Department of Planning and Development, Govt. of Bihar vide Letter No. 228 dated 23.03. 2018 against the petitioner.

10. The petitioner was also issued show cause vide Letter No. 4012 dated 20.08.2018 by the Joint Secretary to which the petitioner had replied with Letter No. 807 dated 11.09.2018, to the concerned respondent of the Department.

11. It has been clarified that since the charges against the petitioner was framed by the DM, Gopalganj, the petitioner's reply to the show cause issued by the department was sent to the DM, Gopalganj for getting his opinion vide Letter no. 5781 dated 15.10.2018. However, no opinion was received from the DM, Gopalganj. Therefore, vide departmental Memo No. 3364 dated 12.10.2020, three men inquiry committee was constituted under the chairmanship of Additional Secretary, Department of Planning and Development, Govt. of Bihar for investigating the charges levelled against the petitioner.

12. It is further submitted that in case of the

inquiry it was found that amount worth Rs.7,00,664/- under heading TDS and VAT was not deposited in the Govt. treasury by the petitioner. As a result of this financial irregularity, Rs.7,00,664/- was withheld from the total amount of Rs.10,97,460/- payable against unutilized earned leave of 300 days to the petitioner with condition that if the petitioner submits the proof regarding payment of VAT/TDS from the supplier against the supply of generator under District Innovation Fund, the withheld amount will be released to the petitioner.

13. Further, it is submitted in the counter affidavit that G.P.F and Group Insurance has already been paid to the petitioner and the pension paper has been forwarded to the Accounatant General, Bihar(Sanctioning Authority) vide Letter No. 313 dated 27.01.2021 for payment of pension and gratuity.

14. Learned counsel for the State submits that the petitioner was given due opportunity of hearing and he had filed a detailed show cause. The order is based on the evidence on record which confirms that the petitioner had deliberately favoured the supplier by not deducting the total

amount of Rs.7,00,664/- on account of VAT and TDS from the bills.

15. Heard the parties.

16. The point that would emerge for determination is whether the respondent authorities have followed the due procudure of law in withhelding the amount of Rs.7,00,664/- from the total amount of unutilized earned leave of the petitioner?

17. It is the case of the petitioner that the petitioner has no knowledge of tax and any amount not deducted from the bills of the supplier was unintentional. The letter for deduction from earned leave of the petitioner was issued without giving any show cause or any information with regard to such deduction which is in violation of the principle of natural justice. Even other wise the failure on part of the petitioner to deposit the amount under TDS and VAT in the Governemnt Treasury will not amount to any financial irregularity and can only be considered to be a technical irregularity.

18. It is made clear that as per the sub-Section (i) of Section 2 of Bihar Value Added Tax Act, the Department

is a dealer within the meaning of the Act and compulsory return is required to be filed by the department for having obtained supply of any article from the supplier, who is also a registered dealer, in accordance with the provision of the Act. Sub-Section (i) of Section 2 of Bihar Value Added Tax Act. is reproduced hereinafter:

> *"**dealer** means any person who, whether regularly or otherwise, in the course of business, buys, sells, supplies, distributes or does anything incidental to such buying, selling, supplying or distributing of goods, directly or indirectly, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes-*
>
> *(A) a local authority;*
>
> *(B) a Hindu undivided family;*
>
> *(C) a company, or any society (including a co-operative society), club, firm, association or persons or body of individuals, whether incorporated or not, which carries on such business;*
>
> *(D) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplied or distributes goods to its members;*
>
> *(E) an industrial, commercial, banking or trading undertaking, whether or not, of the Central Government or of any of the State Governments or of a local authority;*
>
> *(F) a casual trader;*
>
> *(G) a commission agent, broker, factor, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal.*
>
> ***Explanation**.- Every person who acts as an agent on behalf of a dealer residing outside the State of Bihar and buys, sells, supplies or distributes*

goods in the State or acts on behalf of such dealer as-

(a) a commission agent, broker, factor, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called; or

(b) an agent for handling goods or documents of title to goods; or

(c) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment; or

(d) a local branch of a firm or company situated outside the State, shall be deemed to be a dealer for the purposes of this Act;"

19. The provision of Section 19 of VAT Act provides for deemed assessment under the Act and as such in absence of any return having been made available to the petitioner the alleged amount required to be deducted in a particular financial year which has not been disclosed particularly in the paragraph no. 16 of the counter affidavit, the petitioner was deprived of the opportunity to defend his case in absence of vital material being not supplied to the petitioner.

20. Failure of petitioner to deduct amount from supplier's bill and to deposit the amount under TDS and VAT in the Governemnt Treasury will amount to technical irregularity, which could have been rectified within specified period by filing revised return in accordance with the provision of Bihar Value Added Tax, 2005 in case the

same was not deposited with government treasury.

21. The amount of TDS is not supported with the deduction statement and the bills of supplier nor in the order dated 28.01.2021 or any averment in this regard in the counter affidavit. It is admitted in counter affidavit that the amount has been withheld subject to proof relating payment of/ depositing on TDS in government treasury.

22. Admittedly, in the present case, the petitioner was not provided with the details of annual return filed and the assessment order, if any, passed by the Commercial Taxes Department under the provision of Bihar Value Added Tax Act, 2005.

23. From perusal of the averment made in the counter affidavit, vague statement has been made in Para-7 that vide Memo No. 3364 dated 12.10.2020 that a "three men inquiry committee" was constituted under the Chairmanship of Additional Secretary, Department of Planning and Development, Government of Bihar for investigating the charges alleged against the petitioner by the District Magistrate, Gopalganj.

24. The counter affidavit does not disclose the

financial year for which alleged irregularities have been detected, the allegation can only lead to conclude that a deliberate attempt has been made by the respondents to harass the petitioner, who had retired on 30.01.2020, against whom the impugned order has been passed on 28.01.2021 after his retirement. Moreover, there is nothing on record to show that a notice was even issued to the petitioner before passing of impugned order dated 28.01.2021. This Court is of the view that such action on part of the respondents is nothing but gross violation of the principle of natural justice.

25. It is a settled principle of law that adequate opportunity of being heard i.e., “audi alteram partem” forms a cornerstone in the doctrine of principles of natural justice. The opportunity must be real, reasonable and effective and not mere empty formality as laid down by the Hon’ble Supreme Court in **Maneka Gandhi v. Union of India** reported in ***(1978) 1 SCC 248.*** The relevant paragraph is reproduced hereunder:

> *“14. ...True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing*

may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [(1949) 1 All ER 109] that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing…."

26. The proposition has been followed in the case of ***A.K. Kraipak and Ors. vs. Union of India and Ors.*** *reported in* ***(1969) 2 SCC 262*** in paragraph no. 20 which is reproduced hereinbelow:

*"**20.** The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given*

against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. "

27. Subsequently, the above proposition of law has been reiterated in the case of ***State Bank of Patiala and Ors. vs. S.K. Sharma*** reported in ***(1996) 3 SCC 364.*** The relevant paragraph is reproduced hereinbelow:

*"**28.** The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder*

Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] .) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined."

28. The Joint Secretary could not have proceeded to impose penalty of withholding of amount Rs.7,00,664/- without following the prescribed procedure under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Even considering the order passed against petitioner to be administrative decision the same has penal consequences and has prejudiced the petitioner.

29. Every administrative action in want of reason is not sustainable. The Apex Court in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan*** reported in

(2010) 9 SCC 496. The relevant paragraph is reproduced hereinbelow:

> "***47.*** *Summarising the above discussion, this Court holds:*
>
> *(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 Harvard Law Review 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 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (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"."

30. The petitioner has been inflicted with withholding of amount of Rs. 7,00,664/- from the unutilized earned leave of the petitioner on the basis of departmental inquiry made by the three men committee constituted on the administrative side by the Department of Planning and Development. The action is inconsistent with the Bihar

Government Servants (Classification, Control & Appeal) Rules, 2005. The Department was required to proceed against the petitioner on the basis of the information given by the three men committee and the material which were collected in course of inquiry.

31. The record reveals that no departmental proceeding was initiated or the one which was pending before the collector any order has not been passed against the petitioner.

32. The Bihar CCA Rules, 2005 is a complete code and prescribes procedure to impose penalty against a delinquent employee. Rules which are statutory in character are enacted in exercise of powers conferred by the provision of Article 309 of the Constitutions of India. It is well settled principle of law that when a statutory forum is vested by law and a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statue itself. Reliance can be placed in this regard on the judgment of the Apex Court in the case of ***Dhananjay Reddy vs. State of Karnataka*** reported in ***(2001) 4 SCC 9*** and subsequently

in the case of ***Captain Sube Singh and Ors. vs. LT. Governor of Delhi and Ors.*** reported in ***(2004) 6 SCC 440.*** The respondents by not abiding by the provisions of Bihar CCA Rules, 2005 for conducting the disciplinary proceedings against the petitioner and imposing the penalty of withholding Rs. 7,00,664/- from unutilized leave salary has clearly violated the settled principle of law as laid down by the Hon'ble Supreme Court of India.

33. The action of the Joint Secretary, Planning and Development Department, Government of Bihar vide Letter No. 332 dated 28.01.2021 (Annexure-F) by which he has illegally directed to withhold the total amount of Rs.7,00,664/- is held to be without authority of law and the said letter is hereby set aside and quashed by this Court.

34. In the circumstances of the case and in view of the legal position, the order contained in 'Annexure-F' is hereby quashed.

35. This Court finds that the petitioner has suffered physically, mentally and financially by the illegal act even without verifying from the record as to whether actual revenue loss has been caused to the State

Government for not depositing the V.A.T.-T.D.S. deducted from the bills of the supplier penalty has been infliced. This Court finds that the authorities could only proceed for recovery/withholding of any account in accordance with the provisions of Bihar CCA Rules, 2005.

36. As a remark of caution, all the authorities including the Principle Secretary, Planning and Development Department, Government of Bihar, must ensure that before taking any penal action against the employee, the documents is required to be provided to the delinquent employee so that he may defend himself.

37. Accordingly, the present writ petition stands disposed of.

38. There shall be no order as to cost.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	14.07.2023
Transmission Date	N.A