

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14890 of 2023

-
1. Ajay Choudhary S/o Yugal Kishor Choudhary R/o-Ward no.-6, Mohalla-Vidhyadhar, P.O. and P.S.-Khagaria, District-Khagaria.
 2. Abhay Choudhari S/o Yugal Kishor Choudhary, R/o-Ward no.-6, Mohalla-Vidhyadhar, P.O. and P.S.-Khagaria, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Munger.
4. The District Magistrate, District-Khagaria.
5. The Circle Officer Khagaria, District-Khagaria.
6. The Executive Officer, Nagar Parishad, Khararia, Dist.-Khagaria.
7. Sajjan Kumar Choudhari S/o-Shri Kapildev Choudhary, R/o-Choudhary Tola, Rahimpur, PO and PS Muffasil Khagaria, District - Khagaria Bihar-851204.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Advocate.
For the Respondent/s : Mr. Arif Daula Siddiqui, AC to SC-25.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-01-2024

Heard Mr. Alok Ranjan, learned counsel appearing on behalf of the petitioners and Mr. Arif Daula Siddiqui, learned AC to SC-25 for the State.

2. Learned counsel appearing on behalf of the petitioners seeks permission to make amendment by adding “cum District Grievances Redressal Officer” in addition to refer the respondent no.6 in the cause title in course of the day.

3. Permission is accorded.



4. Learned counsel appearing on behalf of the petitioners submits that the petitioners are aggrieved by the *ex-parte* order dated 13.03.2023 passed by the Divisional Commissioner, Munger in Case No. 421110113122205650/1A by which he has been pleased to set aside the order dated 02.03.2022 passed by the Executive Officer, Nagar Parishad, Khagaria and for setting setting aside the consequential order dated 03.06.2023.

5. He submits that one Sajjan Kumar Chaudhary who is not related in any manner with respect to the land on which building was being erected after proper sanction of map by the Nagar Parishad, Khagaria had preferred an appeal being Appeal Case No. 421110113122205650/1A dated 14.12.2022 and the Divisional Commissioner, Munger against the order dated 02.03.2022 passed by the District Public Grievance Redressal Officer cum Executive Officer, Nagar Parishad, Khagaria. without giving any details of the cause and issuing notice to the petitioners or any of the affected parties had set aside the order dated 02.03.2022 and remanded the matter to the District Public Grievance Redressal Officer cum Executive Officer, Nagar Parishad, Khagaria.

6. It is the case of the petitioners that an order dated



02.03.2022 was passed in favour of the petitioners by the Executive Officer, Khagaria, who was then directed by the Divisional Commissioner, Munger to exercise his jurisdiction as a District Public Grievance Redressal Officer, Khagaria. The Executive Officer as a consequence of the order dated 13.03.2023 passed by the Divisional Commissioner, Munger – respondent no.3 has passed an *ex parte* order dated 03.06.2023 contained in Memo No. 1204 dated 14.07.2023 imposing penalty of Rs.20,05,892/- (Twenty lacs five thousand eight hundred and ninety two) against the petitioners.

7. Learned counsel admits that the petitioners were not in a position to appear before the District Grievance Redressal Officer cum Executive Officer, Nagar Parishad, Khagaria due to illness of petitioner no.1 and petitioner no.2 being outside the State. Learned counsel for the petitioners admits that no request for time was made by the petitioners. He informs that the Executive Officer just after issuance of notice contained in Memo No. 571 dated 24.04.2023 proceeded to pass order on 03.06.2023 contained in Memo No. 1204 dated 14.07.2023. On these grounds, learned counsel seeks for quashing of the *ex-parte* order dated 13.03.2023 passed by the Divisional Commissioner, Munger and consequential order



dated 03.06.2023 contained in Memo No. 1204 dated 14.07.2023 passed by the Executive Officer, Nagar Parishad, Khagaria.

8. *Per contra*, learned counsel appearing on behalf of the State submits that on bare perusal of the order contained in Annexure-1, it appears that the same don't require any interference because no order has been passed on merits rather the Divisional Commissioner, Munger who is the First Appellate Authority has directed the District Grievance Redressal Officer cum Executive Officer, Nagar Parishad, Khagaria to pass order in accordance with law. The consequential order passed by the respondent no.6- the Executive Officer, Nagar Parishad, Khagaria is in accordance with law where the petitioners chose not to appear before the respondent no.6-the Executive Officer, Nagar Parishad, Khagaria and waiting for nearly two months the impugned order dated 03.06.2023 contained in Memo No. 1204 dated 14.07.2023 was passed.

9. Having considered the rival submissions made on behalf of the parties, the petitioners have rushed to this Court immediately against a penal order which was passed against them imposing penalty of Rs.20,05,892/- (Twenty lacs five thousand eight hundred and ninety two) imposing condition that



in case of failure, a certificate proceeding can be proposed to be initiated against the petitioners.

10. Exercise of jurisdiction regarding imposing penalty is well settled by the Apex Court in the case of **State of Bihar v. Industrial Corpn. (P) Ltd. reported in (2003) 11 SCC 465 in Paragraph No. 14 and 16 has held hereinafter:**

“14. Coming to the first ground, it is not disputed that no opportunity of hearing of any kind was afforded to the respondents herein before the penalty was sought to be imposed and recovered. It is also admitted that there was no adjudication of the alleged breach of Condition 8 of the tender notice. In *A. Mohd. Basheer v. State of Kerala* [(2003) 6 SCC 159] it was held that unless there is a determination of breach of contract and damages are quantified, no damages can be imposed and recovered. In *G.M., North East Frontier Rly. v. Dinabandhu Chakraborty* [(1971) 3 SCC 883] this Court held that the Government cannot be a judge in its own cause in the absence of any statutory provision empowering it to act as such. In *Vishnu Rice Mill v. Regional Food Controller, Bareilly* [1984 All LJ 592] it was held by the Allahabad High Court as under: (All LJ p. 594, para 13)

“13. Learned Standing Counsel, however, contended that the State Government was justified in withholding both the price payable to the petitioner and the release certificate claimed by the petitioner if it could be shown that the petitioner had failed to perform its obligation under the agreement between the parties. Learned Standing Counsel placed reliance upon clause 9 of the said Order which has been quoted above. In our opinion, this contention of



the learned Standing Counsel is not tenable. Clause 9 itself shows that even though the State Government has a statutory authority to direct a rice miller to convert State Government's paddy into rice, still, the terms and conditions on which the government paddy will be converted into rice by the licensed rice miller will be 'such terms and conditions as may be agreed upon'. The agreement itself containing the terms and conditions cannot be said to be a statutory contract merely because the State Government has a right under clause 9 to direct a rice mill to convert paddy into rice. It has been stated above that along with the counter-affidavit Annexure CA 1 has been annexed, which is said to be the agreement between the parties. In clause 11 of the said agreement there is a provision for arbitration in case of dispute, difference, or question touching or arising out of the agreement or the subject-matter thereof. In our view, if the State Government has any grievance that the licensed miller has failed to fulfil the terms and conditions of the said agreement between the parties, it is not open to the State Government to seek its redress in respect of such grievance by withholding the release certificate under clause 3(4) or by withholding or by making any deduction from the price which is payable by the State Government to the petitioner under clause 7 of the said Order."

16. In the present case, what we find is that before creating a demand of penal duty or penalty, there was no adjudication by any authority as regards the breach committed by the respondents. We also find that no opportunity of any kind was offered to the respondents before the demand as regards the penal duty was pressed against the respondents. The matter was not even examined as to what was the reason for shortfall in the production of rectified spirit. The Molasses Act does not provide for



imposition of such penalty in the event of shortfall of spirit. It must, therefore, necessarily be held that the imposition of the impugned penalty being against the principles of natural justice is illegal and void.”

In this regard, further the Apex Court in the case of **Isolators & Isolators v. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. reported in (2023) 8 SCC 607 has held as under:**

“38.1. The first and foremost being that in the show-cause notice dated 26-11-2019, the appellant was put to notice only as regards the proposition of debarment and in the said notice, nothing was indicated about the proposed imposition of penalty. Though in the cancellation orders dated 19-11-2019 and 21-11-2019, the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty. The submissions on behalf of the respondents in this regard that the said orders dated 19-11-2019 and 21-11-2019 have attained finality do not take their case any further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression “*cancelled with imposition of penalty*” in those orders. Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved.”

11. Keeping the principle laid down by the Apex Court, on bare perusal of the order dated 13.03.2023 passed by the First Appellate Authority cum Divisional Commissioner, Munger, it appears that no notice was given to the petitioners nor the petitioners were heard, however, the matter was remanded back to the Executive Officer, Nagar Parishad,



Khagaria, who had issued notice to the petitioners contained in Memo No. 571 dated 24.04.2023, but according to the petitioners, a statement has been made before this Court that the petitioner no.1 could not file his reply because he was ill and under medical treatment. Petitioner no.2 was not residing in Khagaria. A specific statement has also been made in Para-8 of the writ petition in this regard.

12. The facts which remain to be determined is, as to whether, the *ex-parte* order passed by the First Appellate Authority without having issued any notice to the petitioners and passed behind the back of the petitioners is without jurisdiction, and as a result of same, the consequential order dated 03.06.2023 passed by the Executive Officer can be sustained in the eye of law?

13. In the case of **Institute of Chartered Accountants of India Vs. L. K. Ratna & Ors. reported in (1986) 4 SCC 537**, the Apex Court has found that if the initial order is bad, then consequential order is also bad. Relevant paragraph of the judgment is reproduced hereinafter:

“18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the



original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.” (Emphasis supplied)

14. In light of the discussions made here-in-above and the law laid down by the Apex Court, the order dated 13.03.2023 passed by the Divisional Commissioner cum First Appellate Authority being in complete violation of principles of natural justice is hereby set aside and quashed. The consequential order dated 03.06.2023 contained in Memo No. 1204 dated 14.07.2023 is also fit to be set aside and is quashed.

15. The Executive Officer, Nagar Parishad, Khagaria, if so desires, may proceed in accordance with law and pass appropriate order. In case he proceeds to impose penalty against the petitioners, due opportunity of hearing be given to the petitioners in accordance with law.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	18.01.2024
Transmission Date	N.A.

