**(2006) 08 JH CK 0007**

**Jharkhand High Court**

**Case No:** Writ Petition (S) . No''s. 932, 933, 934, 935, 936, 937, 939 and 940 of 2004

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| Bhim Sen Sulanki and Others | | APPELLANT |
| | Vs | |
| The State of Jharkhand and Others | | RESPONDENT |

**Date of Decision:** Aug. 5, 2006

**Acts Referred:**

- Civil Services (Classification, Control and Appeal) Rules - Rule 14, 49, 55, 55A

**Citation:** (2006) 4 JCR 190

**Hon'ble Judges:** Permod Kohli, J

**Bench:** Single Bench

**Advocate:** Ajit Kumar, for the Appellant; R.N. Sahay, Senior Standing Counsel II, for the Respondent

**Judgement**

Permod Kohli, J.
All those petitions involve common questions of law and are being disposed of by this common judgment.

2. Petitioners herein are in-charge Supervisors and Panchayat Sevaks, posted in various Panchayats/Blocks in Singhbhum West, Chaibasa. They are aggrieved of the letter dated 04th of February, 2004 issued by respondent no. 5, ordering recovery from the petitioners on account of alleged loss caused to the Slate exchequer due to dereliction of duty by them. Validity of the order is challenged, inter alia, on the grounds:-

(i) Order suffers from non-observance of principles of natural justice.

(ii) Order has been passed in most arbitrary and mala fide manner.

(iii). Petitioners being officials at the lower rung of the organization/department had/have no role in disbursement of the payments for the works, in question, and cannot be made liable for any recovery.

3. The facts leadings to the filing of the present petitions are briefly noticed, hereinafter.

4. In a District level meeting relating to the development of the district held on 08th of May, 1999 under the Deputy Development Commissioner, West Singhbhum, Chaibasa, a decision was taken to provide water to all the villages/blocks and for this purpose, it was decided to repair all existing ''Chapakal'' (Tube wells) and to establish new tube wells as per the requirements in all villages etc, These works were to be executed under Jawahar Rozgar Yojna. All the Block Development Officers were directed to execute all the works without any delay. This decision was followed by a letter dated 18th of April, 2000 from the Deputy Commissioner, West Singhbhum, Chaibasa to all the Block Development Officers to execute the works for repair and installation of Tube wells before the commencement of summer season. It was" also communicated that at least one source of water should be available in a village and in a heavily populated village two sources of water must be available. It was further mentioned that the work should be completed by the month of May. B.D.O., concerned initiated the process for repair of the existing tube wells and for installation of new tube wells. Tenders were invited from the contractors and as many as five contractors submitted their tenders. The Committee of five Officers headed by the B.D.O. was constituted and on consideration of tenders, work for repair and new tube wells was allotted to M/s. Hriday Constructions, Chaibasa under Order No. 126 A Dated 27th of April, 2000. A copy of this order was also endorsed to the Panchayat Sevak concerned for information. It is alleged that after completion of the work by the Contractor, the bills submitted by it were to be placed before the Gram Sabha and after taking its approval, proper certificates were to be given by the local Mankis/Mundas/Villagers and only after verification of the works executed by the Contractor, the amount of the approved bills was required to be paid to the Contractor through Cheques. It is further alleged that all works allotted to the contractors were executed as per the direction of respondent Nos. 3, 4 and 5 and the petitioners, who were either Panchayat Sevaks or Supervisors, had no role to play except to supervise the works. Petitioners have also indicated the names of the works executed and the amounts spent on each work. It is further alleged that petitioners supervised all the works executed by the Contractor and bills for works executed were duly placed and approved by the Gram Sabha and on verification certificates were granted by the local Mankis/Mundas/Villagers before the payment of the bills to the contractor. It is alleged that all the works were executed during the period 2000-01 and there was no complaint of any kind from any quarter. It is further slated that it was only in the year 2002 that enquiries were made and reports were sought regarding the execution of the works from the concerned Panchayat Sevaks/Supervisors. It is also mentioned that some of the Panchayat Sevaks/Supervisors had been transferred in the meanwhile and new incumbents were asked to submit their reports. One of the communications dated 16th of January, 2002, whereby petitioners were asked to submit the report, has been

placed as Annexure-5. Some of the petitioners submitted the reports and similarly those officers, who were posted in their places, also submitted their respective reports in respect to the works executed. It is stated that without seeking any explanation and without holding any enquiry, impugned letters have been issued for recovery from the petitioners. This recovery is allegedly on account of wrong payments made for repair. Petitioners have been asked to pay the amounts within four days, failing which, action shall be initiated against them. These recovery letters have been issued by the Block Development Officer, Goilkera. Similar communications dated 04th of February, 2002 have been issued in all the cases. Respondent-State has justified the recovery on the grounds that the works were not executed in accordance with the provisions of ''Jawhar Rojgar Yojna''. It has been mentioned in the reply that certain irregularities said to be committed in execution of the works during 2000-01, 2001-02, appeared in newspapers alleging misuse of funds of J.G.S.Y. (Jawahar Gramin Sarak Yojna) by certain Block functionaries of the Sonuwa Block. The Deputy Commissioner vide his letter dated 1.1th of October, 2002 issued instructions and the Deputy Development Commissioner, West Singhbhum by his letter dated 26th of February, 2003 submitted reports of the irregularities and vide Memo No. 1964/GO dated 09th of June, 2003, instructions were issued to recover the public money from the faulty employees and, on their failure, coercive action was directed to be initiated. It is further stated that the issue of misuse of funds was brought to the notice of the High Court in W.P. (PIL) No. 1422 of 2003. The Hon''ble High Court asked the progress of the recovery of the case and an P.I.R. was lodged in Police Station, which was registered as Case No. 5 of 2004 dated 18th of January, 2004. It is alleged that B.D.O., Goilkera, namely, John George Tirkey floated guidelines of J.G.S.Y. Various irregularities said to be committed in execution of the works as pointed in the report of the Technical Experts has been placed alongwith the reply. It is further stated that the enquiry was held by the District Regional Development Authority and report was submitted vide letter No. 54 (B) dated 11th of March, 2004. On the basis of the aforesaid enquiry report, recovery has been ordered. One of the copies of the report has been placed on record at Page 72 (Annexure-G), in W.P. (S) No. 939 of 2004.

5. I have heard the learned Counsel appearing for the parties and perused the report dated 11th of March, 2004 and other material placed on record. It is not in dispute that petitioners were required to supervise the works executed by the Contractor within their respective jurisdiction. As alleged, the petitioners were to supervise the works executed by the Contractors for which payments were finalized with the approval of Gram Sabha and locals after verification and consequently payments were released through cheques to the contractor. The authorities on receipt of information/complaints called for reports from the Panchayat Supervisors and Panchayat Sevaks and other Officers of the details of the works executed. District Regional Development Authority was directed to hold an enquiry as per the stand of the State. These Officers submitted the Enquiry Report. I have perused the

Enquiry Report, wherein certain irregularities in execution of the works have been pointed out. It is also pointed out that the expenditure said to be incurred for the repairs is on the higher side. It appears from the Report of this Officer that the report is based upon the details of the works executed and spot inspection. However, none of the petitioners were associated in the enquiry nor any explanation was sought from them in respect to their respective role before the Report was submitted. As a matter of fact, the District Regional Development Authority was deputed as a Fact Finding Committee and on receipt of the facts from him, the Government or any other concerned competent Officer has not ordered any regular or detailed enquiry either at Government level in respect to the allegations or the genuineness of the works executed. Even no departmental enqury was initiated in respect to any of the petitioners, who were/are admittedly Government servants. From the reply filed also, it is not revealed that petitioners were provided an opportunity of being heard in respect to any specific allegation against them or any chargesheet was served upon them, seeking their explanation or even a show cause notice asking them to explain allegations or circumstances appearing against them on the basis of any report of Fact Finding Committee. Contrary to that, impugned letters have been issued asking them to pay the amounts, failing which, coercive methods against them. Petitioners have been accused of commission of irregularity and dereliction of duty without specifying any circumstances or serving set of allegations upon them. Though there are vague allegations of non-observance of the stipulations of J.G.S.Y. Scheme but no specific or concrete allegation is communicated. Recovery from the Government servant is prescribed as one of the punishment under Service rules. Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930, prescribed punishments, which can be imposed against a Government servant for misconduct. Relevant extract of Rule 49 is reproduced herein below: -

Rule 49. "The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the Classes (1) to (5) specified in Rule 14, namely:

(i) Censure.

(ii) Withholding of increments or promotion including stoppage at an efficiency bar.

(iii) Reduction to a lower past or time-scale, or to a lower stage in a time-scale. .

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

[(iv-a) Compulsory retirement.]

(v) Suspension.

(vi) Removal from the civil service of the Crown, which does not disqualify from future employment.

(vii) Dismissal from the civil service of the Crown, which ordinarily disqualifies from future employment;

6. For imposing all or any of the punishments provided under Rule 49, the procedure prescribed is under Rules 55 and 55A. Procedure for imposing punishment of recovery as prescribed under Rule 49 (IV) is provided under Rule 55A, which, inter alia, requires serving of a show cause notice.

7. In the present case, no show cause notice was ever issued to any of the petitioners informing specific allegations against each one of them and seeking their reply/explanation. There has been contravention of Rule 55 A which is a procedural safeguard for a public servant.

8. Apart from above, no enquiry has been held fixing the responsibility of each one of the Government servants for alleged loss to the State exchequer and dereliction of duty. The Works have been executed under the supervision of various Officers right from Panchayat Sevaks to B.D.O., how only Officer at the lower rung have been chosen for recovery, when the payments were made by the High Officials at the level of B.D.O. Even the works must have been executed under the supervision of Engineers at various levels. No detailed enquiry has been conducted to find out involvement of officials at higher levels including the Engineers and Block level Officers without whose connivance, irregularities could not have been committed. From the reply, it appears that Officials at the lower rung of the hierarchy like petitioners, who are Panchayat Sevaks and Panchayat Supervisors have been made sacrificial goats to save higher officials, who cannot be absolved of their responsibility in any manner. Payments worth lakhs of Rupees have been made and the officers, who have made payments and/are otherwise required to inspect execution of works and verify the proper execution have been let off. Recovery ensues civil consequences. Whenever civil rights of a person including a Government servant are adversely affected, principles of natural justice are required to be observed.

9. Since, there has been non-observance of principles of natural justice, I quash the impugned letter dated 04th of February, 2004, whereby recovery is being made from the petitioners. However, I direct the State of Jharkhand through its Chief Secretary/Secretary, Rural Development to constitute a Committee comprising of following Officials:

(i) The Deputy Commissioner of the District (ii) Executive Engineer (iii) Superintendent of Police to hold a detailed enquiry in respect to execution of the works in question. The Committee shall also make spot inspection and after holding an enquiry, a Report shall be submitted to the Secretary, Rural Development Department. If the findings of the Enquiry Committee point out dereliction of duty of any of the petitioners or any other officer, State Government shall take action against such officer(s). Besides initiating departmental enquiry/ proceedings,

against such of the Officers criminal proceedings will also be launched in accordance with law. While initiating departmental/disciplinary proceedings, rules will be strictly observed. Let the Committee be constituted under the orders of the Secretary, Rural Development Department within a period of four weeks from the date of communication of a copy of this order. Terms of reference of the Committee shall be clearly specified in the order constituting the Committee. The Committee shall submit its Report to the Secretary, not later than two months. Further proceedings, will depend upon the findings/Report of the Committee. Action shall be taken against the concerned on the Report of the Committee within one month from the date, report is received in the Office of the Secretary, Rural Development Department.