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Bhim Sen Sulanki and Others Vs The State of Jharkhand and Others

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

Court: Jharkhand High Court

Date of Decision: Aug. 5, 2006

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules â€" 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.