

Basanta Ku.Dhal Vs. State and ors.

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Court : Orissa

Decided On : Nov-19-2013

Appellant : Basanta Ku.Dhal

Respondent : State and ors.

Judgement :

W.P.(Crl.) No.48 of 2013 10. 19.11.2013 Heard Mr.R.K.Mohanty, learned Senior Advocate for the petitioner, Mr. S.Das, learned Senior Standing Counsel for Vigilance and the learned Additional Government Advocate.

2. by Challenge is made to the order dated 07.01.2013 passed the Authorized Officer, Special Court, Bhubaneswar in Confiscation Case No.7/2012, whereby the petition filed by the petitioner questioning the maintainability of the proceeding initiated against him came to be rejected.

3. Mr.Mohanty, learned Senior Advocate drew attention of this Court to first paragraph of page 3 of the impugned order which reads thus:In this case the period between May, 1970 to June, 2001 has been taken as the check period. It is true that during the entire check period he was No.holding high public office. But, for trial of the case by the Special Judge, Special Court, and initiation of the proceeding before the Authorised Officer, the date on which search was made is material. The purpose of the Special Court Act being to expedite the trial and make pretrial confiscation to prevent alienation of the suspected properties pending trial by the person concerned by exercising his colour as a person holding

high public or political office, it is No.necessary that for the entire check period he should be a person holding high public office.

4. Mr.Mohanty submits that the learned Authorized Officer having first come to the finding that the petitioner was No.holding the high public office during the entire check period; thereafter, concluded with the finding that it was No.necessary that for the entire check period the petitioner herein hold the high public office. ss 5. In the case at hand, it appears that during pendency of the T.R. No.11/2 of 2008, the petitioner was noticed by the Authorized Officer in Confiscation Case No.7/2012 under Section 13(1) of the Orissa Special Court Act, 2006. It would be suffice to note that the essential contention of the petitioner was that the 2 Authorised Officer having come to the finding that the petitioner was No.holding a high public office as mandatory under the statutory check period it would No.be possible that any part thereof can be covered serving in a high public office.

6. Mr.Das, learned Senior Standing Counsel for Vigilance, on the other hand, placed reliance on the counter affidavit filed by the opposite party-Vigilance Department, particularly in paragraph-6 thereof and Annexures-A and B annexed to the said Counter Affidavit. Mr.Das contended the argument of the learned counsel for the petitioner that though the petitioner was No.holding high public office for the entire check period from May, 1970 till 4th July, 2001 yet. In fact, search was carried in the premises/residence of the petitioner on 5th June, 2001 and at that relevant point of time, the petitioner was serving as Superintending Engineer, Central Irrigation Circle. He further asserts that the Government of Odisha, vide resolution dated 07.06.1999, has classified the post of Government Officers into four groups. Group-A is classified as posts in the pay scale the maximum of which is No.less than Rs.13,500/-. Thereafter, attention of this Court is drawn to Annexure-A to the counter affidavit, which is a communication dated 18.02.2013 received by the Superintendent of Police, Vigilance Cell, Cuttack from the Superintending Engineer, Central Irrigation Circle, Bhubaneswar furnishing the scale of pay of the petitioner, wherein it is indicated that petitioners pay scale was at Rs.10,650-325-15,850/- and such pay scale was pertaining to the period from 16.03.2001 to July, 2001, during which period search and seizure operation was conducted and petitioner is categorized under Group-A.

7. In the light of the discussion made hereinabove, prima facie two things are clear therefrom. Firstly, the first part of the finding vis--vis the concluding part arrived at by the Authorized Officer in page 3 of the impugned order appears to be ex facie contradictory. On the one hand, the Authorised Officer hold that it is true that during the entire check period he was No.holding high 3 public office. and on the other hand, at the end of the said paragraph, the Authorised Officer hold that it is No.necessary that for the entire check period he should be a person holding high public office.. Further, reference has been made by the Counsel appearing for the Vigilance Department to Annexures-A and B. Since there exists an apparently contradictory finding by the Authorised Officer as quoted hereinabove supra, for which the same needs to be quashed, which we so direct.

8. Accordingly, the impugned order is quashed so far as it relates to findings arrived at first paragraph of page-3 and the matter is remanded back to the Court of the Authorised Officer, Special Court for reconsideration of the case of the petitioner. Liberty is granted to both the petitioner as well as prosecution to produce/adduce any additional documentary evidence as they may deem necessary on the issue as to determine whether the petitioner was holding high public office. on the date of search and seizure.

9. The Writ petition is disposed of with the above observations and direction. Issue urgent certified copy of the order on proper application. A free copy of the order shall be supplied to learned Senior Standing Counsel appearing for the Vigilance Department. .. I.Mahanty, J. B.N.Mahapatra, J.4

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