

Brahamchari Yashpal Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-26-1994

Judge : K.S. Paripoornan, C.J. and A.K. Ganguly, J.

Appeal No. : C.W.J.C. No. 886 of 1994

Appellant : Brahamchari Yashpal

Respondent : The State of Bihar and ors.

Advocate for Def. : Mr. Mihir Kumar Jha

Advocate for Pet/Ap. : Mr. Amla Kant Chaudhary

Judgement :

A.K. Ganguly, J.

1. The subject-matter of challenge in this writ application is the order dated 21-1-1994 whereby the Treasury Officer, Saran communicates the order of the Collector, Saran to the effect that Binod Singh, Senior Selection Grade Accountant, the 6th Respondent, has been directed to take over charge of the strong room with immediate effect in keeping with the direction of the Commissioner, Saran Division, Chapra. A copy of the said order has been served to the petitioner for his information and with a direction asking him to hand over charge of the strong room to the 6th respondent. The said order has been made

Annexure-11 to the writ petition.

2. The principal ground of challenge of the said order Annexure-11, is that the same has been passed as a result of political pressure exerted on the administration by the 7th respondent Sri Udit Rai, a Member of the Bihar Legislative Assembly (hereinafter referred to as the Local M. L. A.).

3. The attention of the Court has also been drawn to Annexure-10 which is a letter written by the 7th respondent on 5th January, 1994 wherein the 7th respondent has addressed a letter to Sri Biswas, the 3rd respondent, the Commissioner, Saran Division, Saran at Chapra.

4. In the said letter, the 7th respondent has, inter alia, drawn the attention of the authorities concerned to rule 181-2 of the Bihar Board's Miscellaneous Rules which is to the following effect:

All ministerial officers shall be liable to transfer after three years, their transfer shall be compulsory after three years. No departure from this rule is permissible in any circumstances in case of ministerial officers dealing with money and accounts.

5. Drawing the attention of the authorities to the rule, the 7th respondent stated that immediate transfer of the writ petitioner should be effected who is working for more than three years in the same post in the strong room of the treasury. While making the said recommendation, the 7th respondent has also recommended the posting of the 6th respondent in the post where the petitioner is at present working.

6. Drawing our attention to the said recommendation learned Counsel for the petitioner contends that the transfer of the petitioner has been brought about by the political pressure exerted by the said 7th respondent-a local M. L. A.

7. We are not very much impressed with this argument of the learned Counsel appearing for the petitioner. In our view, the 7th respondent, as an elected representative of the people has not done any thing wrong by pointing out to the administrative heads that in the matter of transfer the rules framed by the Government are to be strictly followed. The petitioner, on the other hand, has no

right in law to continue on the post perpetually and in violation of the relevant rules. It is an admitted position that the petitioner has been working in the post from which he is sought to be transferred for more than three years. As such, the first part of the letter written by the 7th respondent cannot be interfered with by this Court. Difficulties, however, have been created in the second part of the latter where the 7th respondent has recommended the posting of the 6th respondent and which has been rather faithfully carried out by the local administration.

8. This Court is of the view that an elected representative of the people has no right, authority or jurisdiction in law to recommend posting of any person in the Collectorate or in any public office and this Court is further of the view that the administrative heads ought not to surrender or abdicate their discretion in favour of such administration.

9. Apart from the aforesaid impropriety on the part of the local M.L. A., factually also there are various other impediments for which the administrative authority ought not to carry out the said direction of the local M. L. A.

10. From Annexure-4 of the writ petition it appears that the Commissioner, Saran Division passed an order dated 20-12-1991 whereby it was categorically stated that the 6th respondent has organised a delegation to bring him back to the treasury replacing the petitioner but the Commissioner by his order dated 20th December, 1991 was of the view that by organising such a delegation in his favour for bringing him back to the treasury, the 6th respondent has caused political interference in the administration and as such the Commissioner categorically ordered that the 6th respondent must not be given the charge of the post of stamp clerk to which he is now being posted under the impugned order.

11. Then again by another order dated 2nd December, 1992 (Annexure 6) the Commissioner, Saran Division re-affirmed his previous order dated 20th December, 1991.

12. On perusal of these two orders dated 20th December, 1991 and 2nd December, 1992, the Court is of the view that the administrative authorities did not want the posting of the 6th respondent, In the Strong room of the treasury in public

interest and on administrative grounds.

13. it may be relevant to mention here that the 6th respondent challenged those orders before the High Court by filing a writ petition. In that writ petition (numbered as C.W.J.C. No. 12980 of 1992) an affidavit was affirmed on behalf of the administration by the Treasury Officer strongly opposing the writ petition filed by the 6th respondent. The said affidavit was affirmed by the respondents on 17-3-1993. The stand of the administration in the said proceeding will appear from the following paragraphs of the said affidavit:

(11) That again petitioner (6th respondent) being fearless and having scant regard of the District Collector and knowing it well that in order to alleviate the crisis of non-judicial Stamps were procured from Gopalganj district on 29-6-1990 and he again sold without permission those stamps worth Rs. 5,48,385 to stamp vendors of Siwan for his petty gain in between 29-6-1990 to 17-7-1990.

(12) That knowing this factual wrong action of Sri Vinod Singh (6th respondent) the Collector of the district on this administrative reasons transferred his 2 table. He has neither been put to any irreparable loss nor he has been reduced in rank under the orders of the Commissioner. The balance of convenience is also not again the writ petitioner under the circumstances is justified and legal.

14. The said writ application, namely, C.W.J.C. No. 12980 of 1992 filed by the 6th respondent was disposed of by this Court on 24th August, 1993 by an order which is set out below:

In this writ application the petitioner assails an order of table transfer; such order was passed by the Commissioner, Saran Division, Chapra.

Mr. Mihir Kumar Jha, learned Counsel for respondent No. 3 submits that the petitioner can well move the Member Board of Revenue under the Board Miscellaneous Rules for seeking appropriate relief. Mr. G. P. 6 also contends the same ;

Mr. Amla Kant Chaudhary, learned Counsel for the petitioner, in the aforementioned view of the matter, prays to withdraw this application to move

Member, Board of Revenue ;

This application is dismissed as withdrawn with liberty aforementioned with a clarification that this order shall not be construed to mean that we have accepted the case of the petitioner on merit.

15. It appears that the challenge of the 6th respondent to the aforesaid orders dated 20th December, 1991 and 2nd December, 1992 failed and he was directed to make a representation before the Member Board of Revenue for seeking appropriate relief.

16. We have been told by the learned Counsel for the petitioner, which has not been opposed by the learned Counsel for the 6th respondent, that no such representation was made by his client to the Member, Board of Revenue.

17. In the back drop of these facts comes the rather petent recommendation of the 7th respondents, the local M.L.A. on 5th January, 1994 and the administrative authorities by meekly obeying the same ordered on 21st January, 1994 the posting of the 6th respondent in the strong room of the Treasury. The Court, in the peculiar facts of this case, feels that there is more than what meets the eye and with utmost reluctance is compelled to inter that this volte face of the administrative authorities is brought about by the political pressure emanating from the recommendation of the local M.L.A. dated 5th January, 1994. It may be mentioned here that despite repeated queries by the Court, the Counsel appearing for the State respondent has not been able to show when and how the ban on posting the 6th respondent in the strong room vide orders dated 20th December, 1991 have been lifted nor is there any cogent explanation by the State respondents why the 6th respondent who was found unsuitable for such posting as late as August, 1993, was found suitable for the same by January, 1994.

18. It is because of these facts of the case that the Court feels that it ought to interfere.

19. It is well-known that the Court cannot run the administration as it has neither the time nor the expertise to do so but if the Court finds, as it does in the instant

case, that public administration is run at the dictate and design of persons, who have no authority under the law to do so, it is the duty of the Court to interfere and straighten matters out so that people do not lose confidence in the fairness of the administrative machinery.

20. It is equally well settled that when fair play is utterly denied by the administrative authorities, people will turn to Court complaining of such blatant cases of administrative excess and the Court cannot simply fold its hands on the ground that its interdiction may amount to intervention in administrative matters. Our apex Court has laid down that every governmental action must be judged on the touch stone of reason and public interest. (*Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir* reported in : [1980]3SCR1338). Later decision *Shrilekha Vidyarlhi v. State of U.P.* reported in AIR 1991 SC page 337 has affirmed the ratio in *Kasturilal's* case and has made it very clear that the wide sweep of 'Article 14 will undoubtedly take 'within its fold' an unreasonable action which is not in public interest.

21. A perusal of the facts of this case shows that the order dated 21st January, 1994 was not passed either in public interest nor was it informed with reason. As such, the said order falls foul of the principles of both Articles 14 and 16, which have been thus lucidly stated in the case of *E. P. Royappa v. State of Tamil Nadu* reported in : (1974)ILLJ172SC ;-

Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vire : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

The said case was also one dealing with the transfer of the Chief Secretary of the State of Tamil Nadu. The Hon'ble Supreme Court while dealing with a case of transfer in a rather recent Judgment in the case of *Union of India v. S.L. Abbas* reported in : (1993)ILLJ626SC , has been pleased to hold at page 2445 who should be transferred where is a matter for the appropriate authority to decide.

(Emphasis added)

22. Here certainly the 7th respondent is not the appropriate authority to monitor or control the posting of officers in the treasury office but here find that it is at his dictate that the Collector, Saran has posted the 6th respondent in the strong room of the said treasury-a post which was eluding the 6th respondent all these years.

23. When an appropriate authority exercises his discretion at the dictate of an extraneous agency, the resultant decision become vitiated and an ultra vires one. We may quote the relevant observations of H.W.R. Wade (Wade Administrative Law-5th Edition) in this regard at page 329:

Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be approved by British Board of Film Censors, was held to have surrendered its power of control into unauthorised hands.

24. The law in our country in the same as has been held by the Supreme Court in the case of Partabpore Company v. Cane Commissioner of Bihar reported in : [1969]2SCR807 . In that case, the Supreme Court came to the finding that even though the impugned orders have been purported to have been made by the Cane Commissioner, they were, in fact, made by the Chief Minister. While invalidating the orders, the Supreme Court has been pleased to state the law in this connection in the following words:

The Executive Officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context

the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

25. In the instant case if appears to the Court that the respondents State authorities, namely, respondents Nos. 2 to 5 did not exercise their personal judgment in the matter of posting the 6th respondent by the impugned order dated 21st April, 1994. Therefore, the said posting, in reality, is not one made by the appropriate authority even though it purports to be so.

26. For the reasons aforesaid, this Court is of the view that the second part of the request made by the 7th respondent in his letter dated 5th January, 1994 is wholly unauthorised and without jurisdiction and the administrative authorities, namely, respondents Nos. 2 to 5 acted illegally and unfairly by surrendering the discretion to the said dictates of the 7th respondent by posting the 6th respondent as Incharge of Strong Room of the Treasury of Saran by giving thereby a complete go-bye to their previous stand in the matter. The Court, therefore, annuls the order dated 21st January, 1994 in so far as it purports to post the 6th respondent as Incharge of strong room of the treasury of Saran. The Court, however, makes it clear that the petitioner is also not entitled to continue in the present post of Incharge Assistant, Strong Room, Saran Treasury since he has been continuing as such for more than three years. Respondent Nos. 2 to 5 are at liberty to post the petitioner to any other post which is commensurate with his seniority and experience and at the same time respondent Nos. 2 to 5 are restrained from posting the 6th respondent as Incharge of Strong Room of the Treasury of Saran Collectorate. The said post may be filled up by an order of the appropriate authority passed independently and on an objective consideration of the matter and having predominant regard to public interest.

27. With the aforesaid direction, we dispose of this application at the admission stage itself. All interim orders are discharged.

K.S. Paripoornan, C.J.

28. I agree.

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