

Umesh Kumar Singh Vs. Union of India and Ors

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Court : Jharkhand

Decided On : May-14-2015

Appellant : Umesh Kumar Singh

Respondent : Union of India and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.3908 of 2014
Umesh Kumar Singh Petitioner Versus 1. Union of India 2. The State of Jharkhand through its Chief Secretary 3. The Chairman, S.P.C.A. Jharkhand, Ministry of Environment and Forest, Govt. of India, Ranchi 4. The Secretary, Ministry of Environment and Forest, Govt. of India, New Delhi 5. Superintendent of Police, Godda 6. District S.P.C.A. through its Chairman cum D.C., Godda 7. Department of Animal Husbandry and Fishing, Govt. of Jharkhand 8. Sudhir Kumar Singh, Inspector, S.P.C.A, Godda Respondents CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Ram Subhag Singh For the State : Mr. Prabhat Singh, J.C to A.A.G For the U.O.I : Mr. Y.N. Mishra, C.G.C. 12/14.05.2015 Heard learned counsel for the petitioner, department of Animal Husbandry & Fishery and the Union of India. Though the respondent no.3 is represented through their counsel but no one appears on their behalf today. Private respondent appears to have been noticed by order dated 5.11.2014 and as per the Office report notice upon him has been shown to be validly served through 'Dasti' in support of which a supplementary affidavit has also been filed. However no one has entered appearance on behalf of the private

respondent. Petitioner, who was posted as Inspector under Society for the Prevention of Cruelty to Animals(S.P.C.A) has been transferred by the impugned order at Annexure-4 dated 2.6.2014 issued under the signature of Chairman, S.P.C.A., Jharkhand, Ministry of Environment and Forest, Govt. of India, respondent no.3. Petitioner is aggrieved by the said order mainly on two grounds:- (i) that the order of transfer is punitive in nature without any opportunity to represent or determination of his guilt for the allegation made. (ii) that it was without jurisdiction as the Chairman, S.P.C.A., Jharkhand is no longer the authority to effect such transfer. -2- Learned counsel for the petitioner submits that by the impugned order petitioner has been transferred from Godda to the S.P.C.A. Headquarter at Ranchi. The content of the impugned order shows that it is based upon serious allegation that he was in connivance with the persons involved in illegal trafficking of animal and had indulged in extracting gratification from such element. He has also not reported such instance to the local police and his conduct is suspicious. The Superintendent of Police, Godda has also conveyed that the conduct of the petitioner is unbecoming and he should be transferred to some other place. However, no opportunity has been given to the petitioner to respond to such serious allegations. Learned counsel for the petitioner submits that in the affidavit of respondent no.3, though it is stated that show cause notice was issued on 15.4.2014 and that the petitioner did not chose to reply but the notice at Annexure-D does not show that the said letter was ever served upon him. Therefore, the impugned order is punitive in nature without giving him any opportunity to respond. Learned counsel for the petitioner submitted that under the Prevention of Cruelty to Animals (Establishment and Regulation of Societies on Prevention of Cruelty to Animals) Rule,2001 framed in exercise of powers conferred under rule 38(i)(ii) of the Prevention of Cruelty to Animals Act, 1960, the Government of Jharkhand has notified constitution of Committees in respective Districts through notification dated 1.6.2011 vide memo no. 578 issued by the Animal Husbandry and Fishery Department, Government of Jharkhand. According to learned counsel for petitioner by the said notification administrative control over the S.P.C.A., Jharkhand is conferred upon the Animal Husbandry and Fisheries Department, which is empowered to take action against such Inspectors. He has also referred to para 8 of his reply that Animal -3- Welfare Board of India vide its

letter dated 2.8.2002 has revoked the recognition granted to S.P.C.A., Jharkhand. Therefore, the Chairman, S.P.C.A., Jharkhand does not have any jurisdiction to issue any order of transfer of a person holding the post of Inspector like the petitioner. The order, also therefore, being without jurisdiction needs to be quashed. He has referred to the response of the Department of Animal Husbandry brought on record through their counter affidavit. It appears that on the earlier date the respondent no.3 who had filed their counter affidavit had also brought to the notice of the Court that another person, respondent no.8 herein has thereafter been posted in place of the petitioner vide order dated 2.7.2014 and has also joined at Godda on 7.7.2014. Respondent- State has also appeared and file their response. Learned counsel for the respondent- State by referring to para 5 of the counter affidavit has stated that as per the notification dated 1.6.2011 the administrative control of the S.P.C.A. at the District level under the Prevention of Cruelty to Animals Act, 1960 shall be of District S.P.C.A constituted under the Chairmanship of the Deputy Commissioner and at the State level, the administrative control over the Inspectors of S.C.P.A lies with the Animal Husbandry and Fishery Department. He has stated that the department through letter dated 15.10.2014 has called for Inquiry report from the Deputy Commissioner, Godda where after necessary action shall be taken. However, thereafter no further affidavit has been filed by the respondent- department. Learned counsel for the Union of India submits that they have no role to play in the present controversy under the provision of Prevention of Cruelty to Animals Act, 1960. Having considered the rival submissions of the parties and relevant pleadings on record including the affidavits which have been -4- filed on behalf of those respondent not represented today, the order of transfer has been impugned on the ground that it is punitive and also without jurisdiction. It appears from the affidavit of the respondent no.3 that show cause notice was issued on 15.4.2014 (Annexure-D to their counter affidavit) to the petitioner. Perusal of the said notice however does not show that it has actually been served upon the petitioner. The order impugned has been passed thereafter on 2.6.2014 based upon certain serious allegation against the petitioner which if true requires a proper inquiry by the competent authority. This Court cannot go further to comment upon the allegation at this stage. It can be inferred that petitioner was not given adequate

opportunity to respond to the allegations as there was no proper service of show cause notice. However, on the other ground relating to lack of jurisdiction, the legal position is now explicitly clear from the stand of the respondent- Animal Husbandry Department at para 5 of their counter affidavit. They categorically state that vide notification no. 538 dated 1.6.2011 the department has notified the District level S.P.C.A in pursuance of Rule 3 of the Prevention of Cruelty to Animals Act, 1960 and a Committee has been established headed by the Deputy Commissioner in each and every Districts under the aegis of State Animal Welfare Board. The Deputy Commissioner has been entrusted with the duty to submit an Inquiry report to the State Animal Welfare Board after appraisal of the work done by the District S.P.C.A . For effective implementation of the provisions and rules of the Prevention of Cruelty to Animals Act, 1960, Inspector appointed by S.P.C.A. Jharkhand at the District & Subdivision levels has been vested with the powers of investigation and prosecution under the Act of 1960 under the direct supervision of the Superintendent of Police / Deputy Superintendent of Police and the direction of District S.P.C.A. It also states that vide notification -5- dated 1.6.2011 the administrative control over S.P.C.A. Jharkhand at the District Level under the Prevention of Cruelty to Animals Act, 1960 shall be of the District S.P.C.A under the Deputy Commissioner and the State Level Administrative control over Inspectors of S.P.C.A. Jharkhand lies with the Animal Husbandry Department. It therefore appears that on issuance of the notification of 1.6.2011 under the relevant rules of 2001 framed under Prevention of Cruelty to Animals Act, 1960 , the department of Animal Husbandry enjoys the administrative control over the Inspector of S.P.C.A within the State of Jharkhand. Though the District S.P.C.A is headed by Deputy Commissioner conferred with the power of administrative control over the Inspector of S.P.C.A within the District, the order impugned has not been passed by the Deputy Commissioner, Godda or that the Deputy has recommended for his transfer to the Animal Husbandry Department. It is therefore apparent that the Chairman, S.P.C.A., Jharkhand, Respondent No.3 did not have jurisdiction to transfer the petitioner out of the district of Godda which could have been done by the Department of Animal Husbandry which enjoys administrative control over all the Inspectors of SPCA posted in the State of Jharkhand. In view of the aforesaid legal position, the impugned order passed by the respondent no.

3, the Chairman, S.P.C.A. Jharkhand, Ministry of Environment and Forest, Govt. of India, Ranchi, at Annexure-4 is without jurisdiction. On both counts therefore, the impugned order cannot be sustained and it is accordingly quashed. The transfer of private respondent has not been assailed in the present writ petition, though it was brought to the notice of the Court and thereafter notices were also effected upon him, but he has failed to appear. In such circumstances, while quashing the order of transfer at -6- Annexure-4, dated 2.6.2014 , the respondent- department of Animal Husbandry and Fishery is directed to take a decision within a period of 4 weeks from today relating to the posting of the petitioner. Needless to say that the department in exercise of its administrative powers would also be entitled to inquire into the matter of allegation which are said to have been levelled against the petitioner. However, in doing so the department would observe the Principles of Natural Justice as well by giving due opportunity to the petitioner if any adverse order on that count is likely to be passed against him. The writ petition is allowed in the manner indicated herein above with the aforesaid observation. Pending I.A. stands disposed of. (Aparesh Kumar Singh, J.) A. Mohanty / Kamlesh

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