IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7015 of 2020

==========

Rahul Kumar Son of Gajendra Singh Resident of Village- Bhatahan, P.S. - Sugauli, District- East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna.
2. The District Magistrate cum President District Health Society, District- West Champaran.
3. The Officer on Special Duty District Confidential Branch, District- West Champaran.
4. The Civil Surgeon cum Member Secretary District Health Society, West Champaran.
5. The Sub- Divisional Officer Bagha, District- West Champaran.
6. The In-Charge Medical Officer Sub- Divisional Hospital, Bagha, District- West Champaran.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr.Satyavrat Verma, Adv.
For the Respondent/s : Mr.Rajeshwar Singh (GA 10)

==========

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 19-03-2021

The present writ petition has been filed for quashing the order dated 03.02.2020 passed by the District Magistrate-cum- President, District Health Society, West Champaran, whereby and where-under the contractual service of the petitioner as Hospital Manager, Sub-Divisional Hospital, Bagaha, District West Champaran, Bettiah has been terminated.

2. The short facts of the case are that the petitioner was appointed as Hospital Manager on contractual basis by an appointment letter dated 27.06.2011, where-after he was

working continuously to the satisfaction of all concerned, however, in the year 2019, a show cause notice dated 25.05.2019 was issued by the office of the Civil Surgeon cum Chief Medical Officer, West Champaran, Bettiah, requiring the petitioner to submit his show cause reply with regard to 12 charges levelled against the petitioner and others, to which the petitioner had replied by filing his reply. It appears that thereafter, nothing had happened in the matter, however, subsequently the officer-on-Special Duty, District Confidential Branch, West Champaran, Bettiah had issued a show cause notice dated 09.07.2019, whereby and where-under the petitioner was directed to submit his reply to 10 charges levelled against him and again the petitioner had submitted his detailed reply, thereafter. Again nothing had happened, however, it appears that the local M.L.A. of the area had visited the hospital in question and had complained of there being no proper arrangement for treatment of patients and moreover, even essential medicines were not found available in the hospital, hence, a show cause notice dated 19.10.2019 was issued to the petitioner by the District Magistrate, West Champaran, Bettiah to which the petitioner had also filed a detailed reply. However, by the impugned order dated 03.02.2020, the District

Magistrate-cum- President, District Health Society, West Champaran, Bettiah has terminated the services of the petitioner on the ground that he has been found to be guilty and 11 charges, levelled against him have been found to have been proved.

3. The learned counsel for the petitioner has, at the outset, relied upon a judgment reported in (2011) 15 SCC 16 [**GRIDCO LIMITED & ANR. V. Sadananda Dolai and Ors.**] to submit that the Hon'ble Apex Court has held that even in a case of termination of contractual appointment, a writ Court can examine the validity of the termination order passed by the public authority and is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract.

4. At this juncture, the learned counsel for the State submits that the question of maintainability of the writ petition is not being raised, hence, the present writ petition be decided on merits.

5. Now, coming to the merit of the case, the learned counsel for the petitioner has submitted that it would be apparent from the various show cause notices issued to the

petitioner and the impugned order dated 03.02.2020, passed by the respondent no. 2 that the charges levelled in the show cause notice issued by the respondent no. 2 are paltry in comparison to the charges dealt with in the impugned order dated 3.2.2020 passed by the respondent no. 2, resulting in the said order dated 3.2.2020 travelling beyond the bounds of notice, causing violation of the principle of natural justice, hence, the impugned order dated 3.2.2020 passed by the respondent no.2 stands vitiated in the eyes of law.

6. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court reported in (2010) 13 SCC 427 [**ORYX FISHERIES PRIVATE LIMITED v. Union of India & Ors**.], paragraph nos. 23, 24, 27, 31, 32 and 40 whereof are reproduced herein below:-

> **"23.** Relying on the underlined* portions in the show-cause notice, the learned counsel for the appellant urged that even at the stage of the show-cause notice the third respondent has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.
>
> **24.** This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding

is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the 437 impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

40. In *Kranti Associates*[4] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

> "(*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (*b*) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> (*g*) Reasons facilitate the process of judicial review by superior courts.
>
> (*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
>
> (*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in

the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

440(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 Harv. L. Rev. 731-37.)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of *Strasbourg Jurisprudence*. See *Ruiz Torija* v. *Spain*[5], EHRR at p. 562, para 29 and *Anya* v. *University of Oxford*[6], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

7. Thus, the submission of the learned counsel for the

petitioner in nutshell is that the impugned order dated 03.02.2020 passed by the respondent no. 2 is not fully relatable to the charges levelled by the respondent no.2 in the show cause notice, issued to the petitioner i.e. the one dated 19.10.2019 and moreover, only two days' time was granted to the petitioner for filing his show cause reply, which in any view of the matter is not at all adequate and has resulted in violation of the principles of natural justice inasmuch as the petitioner has been precluded from grant of sufficient opportunity to submit his wholesome defence, hence on this count as well, the impugned order dated 03.02.2020 is fit to be set aside.

8. At this juncture, the learned counsel for the petitioner has also referred to a judgment reported in (1980) 3 SCC 1 [**Nasir Ahmad v. Assistant Custodian General, Evacuee Property & Anr.**), paragraph no. 3 whereof is reproduced herein below:-

> **"3.** The facts stated above clearly show that the notice and the declaration that followed are both invalid. The notice called upon the appellant and his brother to show cause why they should not be declared evacuees under clause (*iii*) of Section 2(*d*) of the Act and the ground mentioned in the notice was also based on that clause, yet the Assistant Custodian found that they were evacuees under clauses (*i*) and (*ii*) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on clause (*iii*) was vague and the notice was defective so far as that ground

> was concerned, but that was the only case the appellant was called upon to answer. The foundation of a proceeding under Section 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the appellant was an evacuee under clauses (*i*) and (*ii*) of Section 2(*d*) of the Act must be held invalid."

9. It is thus submitted that since the impugned order dated 03.02.2020 has travelled beyond the bounds of the show cause notice dated 19.10.2019, the impugned order dated 03.02.2020 is also fit to be set aside on this ground, as well.

10. Per contra, the learned counsel for the respondent State has submitted that the impugned order dated 03.02.2020 has been passed after granting due opportunity to the petitioner and not one but three show cause notices were issued to the petitioner so as enable him to submit his show cause reply and only then a well considered and a reasoned order, terminating the services of the petitioner, has been passed on 03.02.2020 by the respondent no.2. Nonetheless, it is submitted that in case the matter is remanded back to the respondent no.2, a fresh order would be passed in accordance with law, considering the merit of the case, expeditiously.

11. Having regard to the facts and circumstances of the case, this Court finds that not only the impugned order dated 03.02.2020 terminating the services of the petitioner, has

travelled beyond the bounds of the show cause notice dated 19.10.2019, issued by the respondent no.2, whereby the petitioner was granted only two days time for filing his show cause reply, which also, in any view of the matter, amounts to denial of adequate opportunity to the petitioner to submit his wholesome defence resulting in violation of the principles of natural justice, but moreover, the show cause notice dated 19.10.2019 would depict that the respondent no. 2 had already predetermined to terminate the services of the petitioner, hence on this ground as well, the impugned order dated 3.2.2020 is not sustainable in the eyes of law, hence the order dated 03.02.2020, passed by the respondent no.2, terminating the services of the petitioner, is quashed, however, with liberty to the respondent no. 2 to proceed afresh, in accordance with law.

12. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.03.2021
Transmission Date	N/A