

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11304 of 2013

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1. Mantun Devi W/o Sri Lal Jha, resident of village- Tengaraha, Police Station- Bheja, District- Madhubani.
 2. Binay Kumar Lal Das S/o Late Sone Lal Das, village- Kanhauli, Police Station- Khajauli, District- Madhubani,

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate Madhubani.
3. Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Madhubani.
4. Senior Deputy Collector, Zila Jana Sikayat Koshang, Madhubani.
5. In Charge Officer, Zila Jana Sikayat Koshang, Madhubani.
6. Block Development Officer Madhepur.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11379 of 2013

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Raushan Kumar S/o Sri Uday Chandra Jha, resident of Village - Rupauli, Police Station - Madhepur, District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Madhubani
3. Deputy Development Commissioner-cum- Chief Executive Officer, Zila Parishad, Madhubani
4. Senior Deputy Collector, Zila Jana Sikayat Koshang, Madhubani
5. In- Charge Officer, Zila Jana Sikayat Koshang, Madhubani
6. Block Development Officer, Madhepur, District - Madhubani

.... Respondent/s

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Appearance:

(In CWJC No.11304 of 2013)

For the Petitioner/s : Mr. Satish Chandra Jha, Advocate

For the Respondent/s : Mr.

(In CWJC No.11379 of 2013)

For the Petitioner/s : Mr. Satish Chandra Jha, Advocate

For the Respondent/s : Mr.

For the intervener : Mr. Manish Kumar No. 13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 24-08-2015 Heard Mr. Satish Chandra Jha for the petitioners in the two writ petitions, counsel for the State in the two writ petitions, Mr. Vivek Prasad appearing for the Zila Parishad in the two writ petitions and Mr. Manish Kumar for the intervener in CWJC No. 11304 of 2013.

The two petitioners are aggrieved by a common order issued by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad Madhubani bearing Memo No. 22 dated 12.04.2013, a copy of which is impugned at Annexure-1 to the respective writ petitions and whereunder they have been directed to deposit a sum of Rs. 1,76,000/- each to make good the financial loss suffered by the Zila Parishad on account of irregularities in installation of solar lights within the Gram Panchayat.

The facts of the case are not too elaborate and briefly stated is that finding certain irregularities in the installation of solar lights that a show cause notice was served on the petitioners bearing Memo No. 500 dated 23.2.2013 by the Deputy Development Commissioner, a copy of which is placed at Annexure-D to the intervention application being I.A. No. 4464 of 2014 filed in CWJC No. 11304 of 2013. The petitioner Mukhiya filed an exhaustive reply on 04.3.2013 responding to the



allegations and submitting that the entire amount so withdrawn and paid to the supplier has been utilized in installation of solar lights and the allegation of misappropriation was denied. In response to the allegation that the Mukhiya did not choose for tender notice and instead decided the matter on the basis of quotation received, it was responded that no such guidelines was received by her on the issue nor the Panchayat Secretary advised her on the matter and thus using prudence that she decided on the lowest quotation. It was further submitted that the proposal was approved in the Gram Sabha by the Committee and was executed after such approval. Not being satisfied that the Deputy Development Commissioner-cum-Chief Executive Officer vide impugned Memo No. 22 dated 24.4.2013 issued the directives in question requiring each of the petitioners to deposit a sum of Rs. 1,76,000/- being 1/3rd of the total amount of Rs. 5,28,00/-. It was further ordered that if the petitioners fail to make the deposit, that an FIR will be instituted besides instituting recovery proceedings by taking recourse to the certificate cases. The petitioners being aggrieved are before this Court.

The complainant appearing through Mr. Manish Kumar supports the allegation which is also reiterated by Mr. Vivek Prasad appearing for the Zila Parishad and while making such



submissions it is also submitted that an FIR has been instituted giving rise to Bheja P.S. Case No. 14 of 2014 and that steps have also been taken for institution of certificate case for recovery of the amount. While supporting the impugned action, learned counsel for the complainant and the Zila Parishad have relied upon an order passed by the Division Bench of this Court in a writ petition so preferred by the complainant bearing CWJC No. 3345 of 2014 which writ petition was disposed of with direction to the Deputy Development Commissioner to implement its order dated 12.4.2013 in case he has found the allegation correct. A copy of the order passed by the Division Bench has been placed at Annexure-F to the intervention application. It is further the submission of Mr. Manish Kumar that the petitioner no. 2 in CWJC No. 11304 of 2013 namely Binay Kumar Lal Das, the Panchayat Secretary has since made his deposit of Rs. 1,76,000/-.

Mr. Jha, learned counsel appearing for the petitioners in the two writ petitions while responding to the submission regarding deposit made by one of the petitioner has submitted that he has no such instructions on the issue but while contesting the impugned order he submits that besides the order being mechanical in nature and passed on the mere directives of the District Magistrate, it does not take into consideration the enquiry



report of the Block Development Officer dated 02.3.2013 placed at Annexure-6 which certifies the installation of the 12 solar lights thus clearing the petitioners of any such charges of misappropriation. He submits that in the circumstances where the proposal was approved in the meeting of the Gram Sabha as well as the Executive Committee in the meeting of the Panchayat and in view of the report of the Block Development Officer dated 02.3.2013, there was nothing left for imagination whatsoever and the allegations stood clarified. He submits that the order impugned is a reflection of mechanical application of mind.

I have heard learned counsel for the parties and I have perused the records. The order impugned dated 12.4.2013 issuing directions to the petitioners to make the deposit failing which criminal case as well as certificate proceedings would be initiated has already taken its effect. Whereas an FIR has already been instituted, a decision has also been taken for institution of certificate proceedings. Any opinion by this Court in such circumstances would amount to prejudicing the issue. Even when the petitioners have relied upon documents to avoid the charges, in my opinion, these are documents to be considered by the appropriate forums before whom the matters are pending but the stage at which the present proceedings rests, I would refrain from

expressing my opinion. The writ petitions are thus disposed of with liberty to the petitioners to raise all issues as raised herein during the course of the proceedings arising out of the police case and before the certificate officer in case the respondents choose to draw any certificate proceedings.

The writ petitions and I.A. No. 4466 of 2014 are disposed of.

(Jyoti Saran, J)

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