

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.291 of 2014

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Bikrant Kumar @ Bikrant Singh son of Ram Ishwar Singh, resident of village-Uphraul, P.S.-Desari, District-Vaishali, presently posted as Panchayat Rozgar Sewak Panchayat, Dharampur Ram Rai, Block - Desari, District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Rural Development, Patna, Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur, Bihar
3. The District Magistrate, Vaishali at Hazipur, Bihar
4. The Deputy Development Commissioner, District-Vaishali, Bihar
5. The Director, Account Administration District Rural Development Authority, Vaishali
6. The Programme Officer-cum-Block Development Officer, Block Desari, Vaishali
7. The Sub-Divisional Officer, Mahnar, Vaishali

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 423 of 2014

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Goutm Kumar S/o Nagendra Singh, resident of Village-Garahi, P.S.-Jandaha, District- Vaishali, at Present posted as Panchayat Rozgar Sewak Gram Panchayat, Rashulpur Habib, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Rural Development, Patna, Bihar.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur, Bihar.
3. The District Magistrate, Vaishali at Hazipur, Bihar.
4. The Deputy Development Commissioner, District- Vaishali, Bihar.
5. The Director, Account Administration District Rural Development Authority, Vaishali, Bihar.
6. The Programme Officer-cum-Block Development Officer, Block Desari, Vaishali.
7. The Sub- Divisional Officer, Mahnar, Vaishali.

.... Respondent/s

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Appearance:

(In CWJC No. 291 of 2014)

For the Petitioner/s : Mr. Shakil Ahmad Khan, Advocate
For the Respondent/s : Mr. Jaishankar Barnwal, Advocate

(In CWJC No. 423 of 2014)

For the Petitioner/s : Mr. Shakil Ahmad Khan, Advocate

For the Respondent/s : Mr. Harendra Pd. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-06-2015

Heard the parties.

Since the two writ petitions arise from the same enquiry report dated 21.2.2013 submitted under the joint signature of the Technician, the Assistant Engineer, the Accounts Officer as well as the Deputy Collector Land Reforms, a copy of which is placed at Annexure-2 in each of the writ petition as well as the final order passed thereon by the Programme Officer, Desari dated 18.11.2013, a copy of which is placed at Annexure-1 to the respective writ petition, hence they have been heard analogous and are being disposed of at the stage of admission itself with the consent of the parties.

Whereas the petitioner Bikrant Kumar has been directed to deposit a sum of Rs. 4,93,700/-, the other petitioner, namely, Goutam Kumar has been directed to deposit a sum of Rs. 1,99,000/-. The charges against these two petitioners who happened to be holding the post of Panchayat Rozgar Sewak, Dharampur, Ram Rai, Block-Desari and Gram Panchayat Rashulpur Habib respectively is that they have defalcated the entire amount earmarked under the respective schemes.

A very limited argument has been made by Mr. Shakil Ahmad Khan, learned counsel appearing on behalf of the respective petitioners to question the impugned order dated 18.11.2013 passed



by the Programme Officer. He submits that the order entirely rests upon the enquiry report present at Annexure-2 and has been passed without any notice or opportunity of hearing to either of the two petitioners to enable them to confront the allegations emanating from the enquiry report. It is submitted by Mr. Khan, learned counsel appearing for the petitioners that although the entire expenses are duly explained and have been entered in the measurement book but since these two petitioners were never afforded any opportunity to explain the expenses that they could not do so and not only the order of recovery has been passed but even an FIR has been instituted against these petitioners giving rise to Chandpura P.S. Case No. 299 of 2013.

Although counter affidavits have been filed in each of the two case but it is silent on the issue as to whether a formal proceeding had been initiated on the enquiry report and whether the petitioners were given an opportunity of hearing to explain and clarify the charges. Apparently the order of recovery is in violation of the principles of natural justice and although learned counsel for the State has strenuously tried to justify the order on the anvil that opportunity of hearing was granted to the petitioners but there is nothing on the record of the proceedings to support such submissions. In fact even the impugned order nowhere discusses that any opportunity of hearing was given to the petitioners rather the order of recovery dated 18.11.2013 of the Programme Officer, Desari entirely rests upon the

enquiry report which has been upheld for directing the petitioners to deposit the alleged defalcated amount. The order dated 18.11.2013 of the Programme Officer impugned at Annexure-1 is in violation of the principles of natural justice inasmuch as apparently no opportunity of hearing has been granted to the petitioners.

Law is well settled and where any order may result in civil consequences, it has to be passed only after giving reasonable opportunity of hearing to the person concerned and only after supplying him with the materials on which the proceedings so initiated, rests, so as to enable him to rebut the charges.

Unfortunately this well settled principle has not been followed by the respondents.

On this limited account the order dated 18.11.2013 of the Programme Officer, Desari insofar as it relates to the two petitioners herein cannot be upheld and is accordingly set aside. The matter is remitted back to the Programme Officer, Desari to pass a fresh order in accordance with law but after giving an opportunity of hearing to the petitioners.

The writ petitions are accordingly allowed.

(Jyoti Saran, J)

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