

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20165 of 2014

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Dilip Kumar Singh, Son of Late Ram Parikshan Singh of Village- Rampur Nawsahan, P.S.- Industrial Area, Hajipur, District- Vaishali, Ex-Jansevak-cum-Panchayat Secretary, Ufraul Gram Panchayat, Prakhand Deshari, District- Vaishali. At present Jansevak-cum-Panchayat Secretary, Prakhand-Patepur, Gram Panchayat Raj, A. Kwahi, P.S. Patepur, District- Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Patna
2. The Director, Panchayati Raj Department, Bihar, Patna
3. The District Panchayati Raj Officer, Vaishali, Hajipur
4. The District Collector, Vaishali at Hajipur
5. The Certificate Officer, Vaishali, Hajipur
6. The Deputy Development Commissioner-cum-Chief Executive Officer, District Parishad, Vaishali, Hajipur
7. The Sub-Divisional Officer, Mahnar, Vaishali
8. The Deputy Collector, Land Reforms, Mahnar, Vaishali
9. The Block Development Officer-cum-Executive Officer, Panchayat Samiti, Prakhand Deshri, Vaishali
10. The Mukhiya Gram Panchayat Raj Ufraul Prakhand, Deshari Vaishali
11. The Panchayat Sewak-cum-Panchayat Secretary, Gram Panchayat Raj, Ufraul, Prakhand-Dehsari, Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Bal Mukund Prasad Sinha, Adv.
For the Respondents : Mr. UMA SHANKAR , GP-4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 07-09-2015

The present writ petition has been filed for quashing a part



of office Memo/Letter No. 2010 dated 6.12.2013 passed by the Block Development Officer, Prakhand Deshari, Vaishali, inter alia, directing for initiating certificate proceedings under Public Demand Recovery Act (for short 'Act') for recovery of amounts said to have been defalcated by the petitioner being Ex-Jan Sewak-cum- Panchayat Secretary, Gram Panchayat Raj, Ufraul, Prakhand Deshari, Vaishali along with Ex-Mukhiya, Sri Nand Kishore Singh based on the inquiry report of a Three Men Committee headed by DCLR, Manhar and for connected reliefs. I. A. No. 9290 of 2014 has been filed for quashing Certificate Case No. 5/2013-2014, in so far as it relates to the petitioner for recovery of Rs.11,71,428/- along with said Ex-Mukhiya, Sri Nand Kishore Singh and in pursuance of official notice dated 18.11.2014 in Certificate Case No. 22/2013-14.

2. Learned counsel for the petitioner submits that the proceedings for recovery of Rs.11,71,428/- from the petitioner jointly along with Ex-Mukhiya, Sri Nand Kishore Singh is wholly illegal and without jurisdiction. It is further submitted that the petitioner was never noticed either during inquiry by the Three Men Committee or thereafter, before the amount was directed to be recovered through Certificate Proceedings and, as such, there has been a violation of natural justice. It is also submitted that in any event, there can be no joint recovery from the petitioner along with Ex-Mukhiya, Sri Nand

Kishore Singh without ascertaining the amount recoverable from each person independently and without fixing individual liability in a duly constituted proceeding.

3. Learned counsel for the respondents appears and opposes the writ petition submitting that material irregularities have been committed in the matter of purchase of solar lights and admittedly, the purchases in question have been made in the instant case at the time when the petitioner was Jan Sewak-cum-Panchayat Secretary, Ufraul Gram Panchayat, Prakhand Deshari, District-Vaishali. The Three Men Committee has duly conducted the inquiry and found various irregularities enumerated in the inquiry report and has recommended for action to be taken according to law against the persons named therein including the petitioner.

4. It is not in dispute that no opportunity of being heard has been granted to the petitioner at any stage before initiation of the certificate case against him. More significantly, the amount of defalcation attributed to the petitioner has not been specified and instead a total amount of Rs.11,71,428/- has been directed to be recovered jointly from the petitioner and Ex-Mukhiya, Shri Nand Kishore Singh. In such circumstances, it cannot be said that liability of the petitioner has been ascertained. It is also not disputed that there is no adjudication against the petitioner, whether by way of a

departmental proceeding or otherwise, in which the petitioner has been alleged to have defalcated any specified amount.

5. This Court is of the view that the ends of justice would be met by setting aside the order as contained in Letter No. 2010 dated 6.12.2013 passed by the Block Development Officer, Prakhanda Deshari, Vaishali to the extent it concerns the petitioner, with a direction to pass fresh orders directing for recovery of such amount through certificate proceedings after ascertainment of the specific amount of defalcation attributable to the petitioner. As a consequence Certificate Case Nos. 21/ 2013-14 and 22 / 2013-14 are also hereby set aside in so far as they relate to the petitioner.

6. Accordingly, the writ petition stands allowed to the above extent.

(Vikash Jain, J)

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