

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9950 of 2014

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1. Kiran Devi wife of Sri Jeeban Maharaj resident of Village + P.O. - Sangi,
P.S. - Phulparas, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar,
Patna.
3. The Joint Director, Department of Panchayati Raj, Govt. of Bihar, Patna.
4. The Collector, Madhubani.
5. The Deputy Development Commissioner, Madhubani.
6. The Block Programme Officer, Ghoghardiha, Madhubani.
7. The Director, District Rural Development Authority, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Adv.

For the Respondent/s : Mr. M. Nasrul Hoda Khan, S.C.18

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 24-09-2015 Heard Mr. Navjot Yesu learned counsel for the petitioner
and learned counsel for the State.

The petitioner is aggrieved by the show cause notice issued by the Monitoring Officer, Panchayat Raj Department, a copy of which is placed at Annexure-13 to the interlocutory application and is dated 10.7.2015. According to Mr. Yesu, the show cause notice is without jurisdiction having issued by the Anushrawan Padadhikari. Learned counsel refers to a Division Bench judgment of this Court passed in L.P.A.No.753 of 2013 (Jai Kishore Prasad Mandal Versus State) to submit that it is the Panchayanti Raj Department alone who can issue a notice of show cause and not

any other authority. In the said case it is the Special Officer who had issued the show cause notice and when the Division Bench observed as such

“If the statute prescribes a particular procedure to be followed only that procedure is permissible and all other modes of performance are strictly forbidden. Under Section 18(5) of the Act, a show cause notice could be given for alleged opinion regarding an abuse of power or misconduct by the Mukhiya, but the foundation for the same is the formation of a prima facie opinion by the statutory authority, i.e. the State Government. The power to form a prima facie opinion cannot be usurped or be delegated to any other authority. Had the notice dated 30.1.2012 stated that based on the report of the District Magistrate a prima facie opinion had been formed by the State Government and the Appellant was then asked to submit his reply, matters may have been different. The Special Executive Officer, Department of Panchayati Raj is not a person authorized under Section 18(5) of the Act to form a prima facie opinion. The show cause notice dated 30.1.2012 is therefore unsustainable in its present form and is set aside without prejudice to the right of the respondents to proceed afresh in accordance with law, if they so deem necessary.

The order under Appeal is set aside.

The Appeal is allowed.”

A cursory glance at the opinion expressed by the Division Bench reflects that even the Division Bench had opined that if the show cause notice is based upon the opinion formed by the District Magistrate, the matter would have been different. In fact the show cause notice in question has been issued in observance of the opinion of the Division Bench which also finds mention in the show cause notice. What Mr. Yashu endeavours to argue is that

since in the show cause notice the Monitoring Officer has proceeded to recall the earlier show cause notice on grounds of invalidity which would also invalidate the report which is the basis of the said show cause notice.

In my opinion, the argument is clearly misconceived and is only taken to be rejected. The show cause notice relies upon a report of the District Magistrate and requires the petitioner to respond before the Principal Secretary of the Department as against the charges which is much in tune with the Division Bench opinion and suffers from no infirmity.

It is admitted by Mr. Yesu that even though the petitioner was pursuing his remedy before this Court but he has filed his show cause. In consideration of the matter that the petitioner has already responded to the show cause notice, the writ petition is disposed of with direction to the Principal Secretary to dispose of the matter in accordance with law after opportunity of hearing to the petitioner.

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(Jyoti Saran, J)