

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9636 of 2014

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1. Subetara Begum W/o Shri Abu Rashid Resident of Village Sontha, P.S. Kochadhaman, District Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Bihar, Patna.
3. The Joint Director, (Monitoring), Panchayati Raj Department, Bihar, Patna.
4. The District Magistrate, Kishanganj.
5. The Lokpal (Mgnrega), Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Adv.

For the Respondent/s : Mr. Sunil Kr. Mandal, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 17-09-2015 Heard Mr. Satyabir Bharti, learned counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the show cause notice dated 24.4.2014 bearing letter No.2992 issued under the signature of the Joint Director (Monitoring) Panchayat Raj Department, Government of Bihar, Patna whereby the petitioner who happens to be the Mukhiya of Gram Panchayat Raj, Sontha in the district of Kishanganj has been directed to respond to the charges set out thereunder as also to answer as to why he be not proceeded under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act').



Mr. Satyabir Bharti learned counsel appearing on behalf of the petitioner submits that although under the provisions of 'the Act' it is the District Magistrate alone who has been vested with the powers to enquire into the affairs of the Panchayat under Section 152 thereof and other provisions but in so far as the present case is concerned, the District Magistrate without applying his mind has mechanically forwarded the report of the Ombudsman appointed under the Mahatma Gandhi National Rural Employment Guarantee Act (hereinafter referred to as 'the MANREGA') with a recommendation to initiate proceedings against the petitioner under Section 18(5) of 'the Act', thus abdicating his responsibility vested under 'the Act'.

According to Mr. Bharti an Ombudsman is a stranger to the Panchayat Raj Act and the District Magistrate by simply forwarding the report so submitted by the Ombudsman has discharged a mechanical function. He submits that in absence of any enquiry by the District Magistrate, the report of the Ombudsman alone cannot be a subject matter of the proceedings more particularly where the said order is subject to an appeal remedy which is not presently available to the petitioner.

He submits that the petitioner has been severely prejudiced by this mechanical act of the District Magistrate since whereas the

petitioner cannot question the order of the Ombudsman before the appellate forum which does not exist and on the other hand, he has been made to face a proceeding on the basis such opinion which the State authorities claim to be binding on them.

The records of the proceeding manifests that responding to the notice so issued by the Panchayat Raj Department, the petitioner has filed a comprehensive reply to each of the charges. The matter is thus pending for final adjudication before the Principal Secretary of the Department.

Although Mr. Bharti has raised valid issues which invite considerations but since the matter is yet pending for final adjudication before the Principal Secretary of the Department of Panchayati Raj, this Court would reserve its opinion since these issues would also fall for consideration by the Principal Secretary at the time of adjudication of the matter.

As observed hereinabove, since the matter remains pending before the Principal Secretary hence the writ petition is disposed of reserving liberty to the petitioner to raise all issues as raised herein as also taken note of in this order before the Principal Secretary during the course of hearing of the proceedings.

The petitioner would appear before the Principal Secretary along with the copy of the order on or before 28.9.2015 and

whereafter the Principal Secretary, Panchayat Raj Department would proceed to dispose of the matter in the light of the stipulation made hereinabove and after giving an opportunity of hearing to the petitioner.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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