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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1658 of 2014

1. Ashwani Sinha S/o Jahur Ram Aged About 34 Years Occupation Sarpanch Of Gram Panchayat Dodki R/o Village Dodki, Tahsil Dhamtari P.S. Arjuni, Civil & Revenue District Dhamtari, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhawan, Naya Raipur, C.G.
2. Lokpal Mahatma Gandhi Narega District Dhamtari (C.G.) Office At Room No. 62, Collectorate Dhamtari, C.G.
3. Dharendra Kumar Sinha S/o Ghasiram Sinha R/o Village Dodki, P.S. Arjuni, Tahsil & Distt. Dhamtari C.G.

---- Respondent

And

WPC No. 1482 Of 2014

1. Umesh Kumar Thakur S/o Isharram Thakur Aged About 47 Years Occupation Panchayat Secretary Of Panchayat Dodki, R/o Village Baliyara, Tahsil Dhamtari, P.S. Arjuni Civil & Revenue Distt. Dhamtari C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through Its Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhawan, Naya Raipur, C.G.
2. Lokpal Mahatma Gandhi Narega District Dhamtari (C.G.) Office At Room No. 62, Collectorate Dhamtari, C.G.
3. Dharendra Kumar Sinha S/o Shri Ghasiram Sinha R/o Village Dodki, P.S. Arjuni, Tahsil & Distt. Dhamtari C.G.

---- Respondents

For Petitioners	Shri Kamal Kishore Patel, Advocate
For Respondent/State	Ms. K. Tripti Rao, PL
For Respondent No.3	Shri Kunal Das, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/11/2015

1. Petitioner Ashwani Sinha in WPC No.1658/2014 is the Sarpanch of Gram Panchayat Dodki, whereas the petitioner Umesh Kumar Thakur is the Panchayat Secretary of the said gram panchayat. Since they are aggrieved by the common order dated 10.04.2014 passed by the Lokpal of the Mahatma Gandhi National Rural Employment Guarantee Act, Dhamtari (for short 'the Lokpal'), both the matters involved common facts and common question of law, therefore, they are being considered and disposed of by this common order.

2. Respondent No.3, Dharendra Kumar Sinha lodged a complaint with the Lokpal, *inter-alia* alleging that the petitioners have got executed several works under the scheme of Mahatma Gandhi National Rural Employment Guarantee Act from the year 2010-13, in which they were involved in huge corruption. Substandard quality of Choupal has been constructed, which is on the verge of collapse within two years of construction. For construction of a new tank, an amount of Rs.2.86 lacs was sanctioned, whereas for construction of Darsa Basti approach road an amount of Rs.8.2 lacs was sanctioned. In the said work, Sarpanch Ashwani

Sinha has committed forgery by mentioning the names of his family members i.e. Jahoor Sinha, Girja Bai Sinha, Rambati Sinha and Yamuna Sinha. Similarly the soil extracted in course of construction of tank was used for construction of approach road, however, separate bills were raised for purchase of soil for construction of the approach road, which amounts to corruption. For deepening of tank of Aabadipara, the Sarpanch again forged the muster roll by including the names of his family members and similar illegal and corrupt use of soil extracted from the tank was used in the construction of approach road. The Sarpanch allotted contract of several building materials to his own unregistered firm namely, Sinha Buildings, which is wholly illegal and amounts to corruption. He shown to have purchased 1200 tractor load of soil, which is wholly incorrect. In the financial year 2011-12, work of WBM of another road was sanctioned, but the work was never completed, however, the entire amount has been withdrawn. The corruption has been made by the Sarpanch and the Secretary as the funds are withdrawn under the signature of these two persons.

3. The Lokpal issued notice to the petitioners. It is argued that the Panchayat Secretary Umesh Kumar Thakur has not received any notice. The notice issued in his name was received by the Rojgar Sahayak, therefore, insofar as it relates to the Panchayat Secretary the order has been passed without giving any opportunity of hearing. In addition, it is argued for both the petitioners that they have completed all the work after technical

sanction of the superior authorities and the entire work has been measured before making payment, therefore, there is no illegality in the matter.

4. This Court had summoned the record of the Lokpal. From the record, it appears that notices were issued to both the petitioners. Statement of the complaint was recorded and in the same statement at least 18 villagers including the labourers have signed before the Lokpal.

5. The impugned order clearly mentions that statement of Sarpanch has been recorded and thereafter to ascertain the nature and quality of work as well as the quantity of materials used in the construction, the Lokpal requested the Collector to constitute an enquiry team. The Collector constituted enquiry team consisting of Shri A. K. Sharma, SDO, RES, Shri J. R. Rajak, Coordinator (Technical), Janpad Panchayat, Dhamtari and Shri Abhijeet Mitra, Sub Engineer, RES, who visited the spot, conducted inspection and submitted the enquiry report on 31.03.2014 finding the following instances of corruption.

- Recovery of Rs.2,69,604/- for substandard construction of approach road.
- Recovery of Rs.8,21,088/- for WBM work, which was not found to have been executed at all.
- Recovery of Rs.1,02,408/- for substandard and lesser length of construction of drains. For the sanctioned work of 1500 meter only 546 meter length was constructed.

- Giving contract to the firm owned by the Sarpanch himself amounts to corrupt practice.
6. Based on the above findings, the Lokpal directed for recovery of total amount of Rs.13,98,620/- and for instituting criminal case against the petitioners.
 7. It is argued that direction for lodging the FIR has been made without giving any opportunity of hearing to the petitioner Panchayat Secretary, therefore, the same is illegal.
 8. The question as to whether a person is required to be heard before lodging an FIR has been decided by the Supreme Court against the prospective accused.
 9. In view of the settled legal position even if the Panchayat Secretary was not heard before passing the impugned order, a direction for lodging the FIR can be passed because no prior opportunity of hearing is necessary to be given to the prospective accused. (See : *Union of India and another v. W.N. Chadha*¹, *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. and Others*² & *Central Bureau of Investigation and another v. Rajesh Gandhi*³).
 10. Insofar as the order of recovery of the amount is concerned, the Lokpal has only recommended the matter for recovery. Since this part of the order cannot be passed without giving opportunity of hearing insofar as it is against the petitioner Panchayat

1 AIR 1993 SC 1082

2 (1999) 5 SCC 740

3 AIR 1997 SC 93

Secretary, it is directed that before making recovery against the Panchayat Secretary, the competent authority shall afford him proper opportunity of hearing.

11. The petitioner Ashwani Sinha, Sarpanch of Gram Panchayat was noticed and he has submitted the reply before the Lokpal. The findings recorded by the Lokpal is otherwise based on the report submitted by the Enquiry Committee, which consisted of technical persons, therefore, the same is in the nature of report by the experts. It is settled law that the writ Court cannot sit over the findings recorded on the basis of report submitted by the experts.

12. In the result,

- WPC No.1658/2014 filed by Ashwani Sinha, Sarpanch of Gram Panchayat Dodki, *sans* merit, is liable to be and is hereby dismissed.
- WPC No.1482/2014 filed by Umesh Kumar Thakur, Panchayat Secretary of Gram Panchayat Dodki is disposed of with a direction that before initiating the recovery proceedings proper opportunity of hearing be afforded to him. However, the direction for lodging the FIR against this petitioner is not interfered with.

13. No order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA