

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1733 of 2013

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Chandra Kishore Kumar S/O Shri Narad Kumar R/O Village And P.O.- Barka
Balua, P.S.- Patahi, District- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar through D.G.P., Bihar, Patna
2. Superintendent of Police (Vigilance), North Zone, Muzaffarpur
3. Shri Subhash Sah, Deputy Superintendent of Police Incharge Vigilance,
Vigilance Investigation Bureau, Zonal Office, Club Road, Mithanpura, Muzaffarpur
4. Sanjeev Kumar S/O Late Kapildeo Kumar R/Ovillage- Mahmada, P.O.- Barka
Balua, P.S. Patahi, District- East Champaran

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10682 of 2011

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1. Mahamadawali Primary Agriculture Credit Co. -Operative Society Having Its
Office At Village-Barka Balua,PS-Patahi,Distt.East Champaran through its
Chairman.
2. Smt. Asha Singh W/O Sri Chandra Kishore Kumar At Present Chairman Of
Mahamdawali Primary Agriculture Credit Co-Operative Society.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Superintendent of Police (Vigilance) North Zone Muzaffarpur
3. Sri Subhash Sah Deputy Superintendent Of Police In-Charge Vigilance
Investigation Bureau Zonal Office Club Road Mithanpura Muzaffarpur.
4. Central Co-Operative Bank Motihari through its Managing Director
5. Branch Manager Central Co-Operative Bank Branch Palaridyal Motihari.
6. Ramadhar Sah S/O Rambaran Sah R/O Village-Po-Barka Balua, P.S-Patahi,
Distt.East Champaran.

.... Respondent/s

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Appearance :

(In CWJC No. 1733 of 2013)

For the Petitioner/s : Mr. Yogendra Mishra, Advocate

Mr. Binod Kumar

For the Vigilance : Mr. Ramakant, Sharma, Sr. Advocate

Mr. Arvind Kumar, Advocate

For the State: Mr. Manoj Kumar Sinha,

(In CWJC No. 10682 of 2011)

For the Petitioner/s : Mr. BINOD KUMAR

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 17-03-2016



The petitioner of CWJC No. 1733 of 2013 was the elected Chairman of Mahmada Primary Agriculture Credit Cooperative Society, Barka Balua, P.S. Patahi, District-East Champaran (for short "The PACS") and held office as such between 2006 to 2009. The petitioner of CWJC No. 10682 of 2011 is the PACS represented by the present Chairman who is the wife of petitioner of CWJC No. 1733 of 2013. Both the writ applications raise common issue(s) and as such they have been heard together with the consent of the parties. The order present will govern them.

Relevant facts for the disposal of the case shall be noticed from CWJC No. 1733 of 2013. In the year 2009, election to the Managing Committee of the PACS was held in which Chandra Kishore Kumar, his wife Smt. Asha Singh as well as the respondent no. 4 filed nominations. The petitioner Chandra Kishore Kumar later withdrew. His wife Smt. Asha Singh was declared elected. During the tenure, the petitioner Chandra Kishore Kumar held the office of the Chairman of PACS the Scheme for grant of KCC loan to the Members of PACS was sponsored by the Central Government as well as the State Government. Several loans were recommended/sanctioned by the PACS to the Members, whereafter payment was made by the Central Cooperative Bank. In the year 2006, the crop insurance scheme/policy was also implemented through PACS. Crops grown by the Members of the PACS were



ensured by PACS and the premium amount whereof was paid by the Central Cooperative Bank. On claim, insurance amount was paid to the members/farmers by the Cooperative Bank. At the instance of the respondent no. 4, it is stated, an enquiry was made by the District Magistrate, East Champaran, with regard to the alleged illegalities/irregularities committed by the Chairman in sanctioning the KCC loan as well as in the insurance of standing crops of the Members of the PACS. The said enquiry was dropped as no irregularity was found. Again the matter was raised in the Assembly and enquiry was made and the matter was dropped. A petition was filed before the Lokayukta, Bihar, which is stated to be pending. Unrelenting respondent no. 4 got a petition filed through another person before Vigilance Investigation Bureau. On the basis whereof, Vigilance Case No. 36 of 2011 was instituted, and a preliminary enquiry ensued. In connection therewith, several general and personal informations were sought from the Cooperative Department as well from the petitioner of CWJC No. 1733 of 2013. Annexure-2 is one such communications addressed to the petitioner Chandra Kishore Kumar calling upon him to furnish diverse informations relating to him and his family. As no information was furnished by the petitioner (Chandra Kishore Kumar) again the notice dated 12.10.2015 (Annexer-4 to I.A. No. 8858 of 2015) was issued to him to furnish informations relating to his family members,

their property, both moveable and immoveable, and their financial investments. In the aforesaid interlocutory application, the legality of the said communication has also been challenged.

Heard Mr. Yogendra Mishra, the Sr. counsel in support of both the writ applications and the counsel for the State as well as Mr. Ramakant Sharma, the counsel for the Vigilance.

The counsel for the petitioner submits that the petitioner being the Chairman or Ex-chairman of the PACS is not a public servant. The Vigilance cannot make an enquiry against the office bearers of the PACS. Section 58 of the Bihar Cooperative Act (for short "The Act") defines public servant. It is a State law. The general law enacted called the Prevention of Corruption Act, 1988 (for short "PC Act") shall not be applicable in their case. The office bearers of the Managing Committee of PACS are not engaged in agriculture, trade or banking and do not receive any aid or grant either from the Central Government or the State Government or from any Corporation established under Central Act or State Act or any Authority or Body owned/controlled/aided by the Government. He relied in support of the said contention on *S.S. Dhanoa Vs. Municipal Corporation Delhi*, (AIR 1981, SC 1395, = 1981 Labour Law Journal, Vol-II, 231). The definition of public servant provided in Section 2(C)(ix) of the P.C Act shall not be applicable in their case for the simple reason that the cooperative society does not



get any financial assistance or aid either from the Central Government or State Government or any corporation or financial institution established by or under the control of the Government. Relying on a judgment of this Court rendered by the Special Bench in case of *The Organiser, Dehri C.D & C.M Union Ltd. Vs. State of Bihar (Sp. Bench) reported in 2014(1) PLJR, 695* it has been contended that the society is not a State or instrumentality of State within Article 12 of the Constitution of India. It also cannot be equated to the company registered under the Indian Companies Act. In this regard, he relied on Section 13 of the Cooperative Societies Act which declares Society as a body corporate. He also referred to Section 3 of the Act which contemplates the provisions of Indian Company Act shall not be applicable to the provisions of the Act. As regards the informations which are sought through diverse notice(s) from him or the PACS by the Vigilance, it is urged that they are wholly unjustified and illegal. No citizen can be made or coerced to be a witness against himself and provide informations for being prosecuted. He placed reliance on Article 20(3) of the Constitution of India. Along with the supplementary affidavit, the guidelines (Annexure-5) or instruction issued by the Central Bureau of Investigation (CBI) for adherence to in all vigilance enquiries has been annexed. The CBI is empowered to investigate cases of corruptions against the public servant. For making preliminary



verification/enquiry the sleuths of CBI are required to make such verifications of assets, income etc. in a secret and discreet manner and only on such secret verifications, if a prima facie case is made out then a case is required to be lodged/registered. Diverse notices in the shape of questionnaire issued to the petitioner Chandra Kishore Kumar, seeking his personal details/informations by the Vigilance is a colourable exercise of power having no sanction of law and is/are bad in law.

In contra, Mr. Ramakant Sharma contended that the petitioner being the Chairman/Ex-Chairman of PACS is a public servant, and can be proceeded against on the charge(s) of corruption as defined and provided in the P.C. Act. He next submits that the present application is premature as till date no case has been registered against the petitioner(s) treating them to be public servant. It is an anticipatory writ petition and merits to be dismissed.

Although, no criminal case as of now has been registered against the petitioner(s), but considering the notices issued by the Vigilance to the petitioner and the rival contentions made at the Bar, the Court is called upon to examine whether the office bearer of PACS shall constitute public servant within the provision(s) of the P.C. Act. Before I further deal with the said questions, few relevant provisions defining public servant referred by the parties merit attention of the Court. Clause twelfth of Section 21 of the Indian

Penal Code provide as under:

Section 21. “**Public Servant**”.- The words “public servant’ denote a person falling under any of the descriptions hereinafter following; namely:-

[Twelfth. —Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government.

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

Section 2(C)(ix) of the P.C. Act defines public servant as under:

Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

There is no controversy on the character of such society as adumbrated in ***Vipulbhai M. Chaudhary Vs. Gujarat Milk Marketing Federation Limited, (AIR 2015, SC 1960)*** that it is an Autonomous Associations of persons united voluntarily to meet their common, economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. It is essentially private in nature. It may instantly be also mentioned



that with a view to support his contention, the counsel for the petitioner relied on *Shanti Ranjan Bhattacharya Vs. State of Mysore, reported in AIR 1958 Mysore 82*, but the same shall not be very relevant to resolve the issue as the judgment dealt with criminal cases lodged under Section 409 or related penal provisions under Indian Penal Code. The pristine question of law in the case is whether the petitioner having served as the Chairman of PACS can be said to have held an office by which he can be treated as the public servant within the meaning of P.C. Act. In this connection, the petitioners have also relied on *S.S. Dhanoa (Supra)*. On going through the case, this Court finds that the proposition of law laid down therein would also have not much relevance. The Hon'ble Apex Court, in the said case, considered the question whether an IAS officer whose services was placed at the disposal of a Cooperative Society can be treated as public servant within the meaning of Section 21 clause twelfth of the IPC, for the purpose of applying the protection granted to such public officer under Section 197 of the Cr.P.C. The Hon'ble Apex Court noticed that in welfare State, there is greater participation by Government in various commercial activities. Noticing the various provisions, the Hon'ble Supreme Court held that incumbents of supervisory and other key posts including that of the General Manager cannot be appointed or removed without the prior approval of the Central Government.



Thus, noticing the salient features appearing in the case, the Hon'ble Apex Court directed the Trial Court to first examine and determine whether the appellant was protected under Section 19(2) of Prevention of Food and Alteration Act. Be it further noted that under the Bihar Indian Service (conduct rules) as also India Services (Disciplined and Appeal Rules), a Member of the service whose services are placed at the disposal of a Company, Corporation or other Organisation or Legal Authority by the Central Government or the Government of State shall be deemed to be a Member of the service serving in connection with the affairs of the Union or in connection with the affairs of the State, notwithstanding that his salary is drawn from the source other than the consolidated fund of the Central Government/State Government.

Although, there is not much pleading in the writ petition, but in course of submissions, the counsel for the petitioner stated that one of the functions of the PACS is to receive aid/grant/fund from NABARD and disburse to its eligible members. Whether in the process of such disbursements of loan, the society earns or gets any financial benefit has not been clarified. He further submitted that on verification, the society recommends for extension of loan under KCC policy/scheme to its members. Similarly, the society recommends for insurance of standing crops grown by the farmers/members whereafter the financial institution pays the

premium and also the value of the insurance policy in case of a claim.

In K.J. Sahadevan v. State of Kerala, (1977 Criminal Law Journal 637), the Hon'ble Apex Court considered the amendment made in Section 161 of Indian Penal Code vide Criminal Law Amendment Act and found that the scope of the definition of the expression "Public Servant" was amply widened. The petitioners being employees of cooperative societies are deemed to be public servant.

The contention of Mr. Mishra is that in the State of Bihar the Cooperative Societies Act is applicable and Section 58 thereof has not been amended. The petitioner shall not be construed as the public servant. The said contention of the counsel for the petitioner, in my considered view, is misplaced. As seen above, the PACS deal with the fund provided by the Institution/Body controlled or aided by the Government. Indisputably, the petitioner is/was the Chairman of the cooperative society engaged in agriculture or related activities. It receives grant/fund or at best deal with the grant/fund received from NABARD or Cooperative Bank which appear body/bodies owned/controlled or aided by the Government. The true character of NABARD has not been placed before the Court. However, this much is evident that it's a Body/Authority controlled by the Government and receive corpus/fund to assist the



farmers with credit(s)/loan(s) through PACS. Further, on the recommendation or approval by the society (PACS), the funds are made available to the members/farmers may be through the Cooperative Bank. The cooperative society, thus deals with the fund received from such Authority/Body. What actually is the return in terms of earning is, neither clarified nor very relevant for answering the issue. In this view of the matter, the office bearers like the petitioner(s) of the cooperative society (PACS) are holders of the public office and therefore public servants within the meaning of “Public Servant” as defined in PC Act. Furthermore, the State is under constitutional obligation to take steps in diverse ways to take care of the farmers part of which is discharged by such cooperative societies. Construing the case in such manner also this Court finds no legal difficulty to hold that the petitioner(s) being the Chairman/Ex-Chairman of the cooperative society shall constitute public servant within the meaning of Section 2(C)(ix) of the PC Act. The contention of Mr. Mishra to the contrary cannot be upheld.

Adverting to the challenge to the notices/questionnaires issued by the Vigilance, this Court finds that any such enquiry or preliminary enquiry should be secret or discreet. The petitioner who may be the proposed accused(s) cannot be called upon to furnish personal details with regard to his/her asset(s)/financial investments, etc. Nothing has been placed by the counsel for the Vigilance,

providing any guidelines in this regard to the Vigilance personnel(s). Even otherwise, no citizen can be coerced to give personal informations enabling the Vigilance or the investigating agency to proceed to frame him/her. The purpose of preliminary enquiry is to gather relevant informations/details discreetly in order to find out a prima facie case. The guideline(s) issued by the CBI is also to the same effect. This is the ethos of the provisions contained in Article 20(3) of the Constitution. At this juncture, the Court would notice the submission of Mr. Sharma that the writ application is premature, as no FIR or Vigilance case till date has been registered by the Vigilance. Be that as it may, in the light of the discussions made above, this Court does not approve the notice/questionnaire issued by the Vigilance calling upon the petitioner to answer/respond the same. Those questionnaires/notices issued to the petitioner are quashed.

The writ application is partly allowed.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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