

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2759 of 2014

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Mayanand, Son of Shri Indra Kumar, Resident of Village Ataunatur, Ward No. 13,
Post Lalganj, P.S. Lalganj, District Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna
2. The Commissioner, Manrega, Rural Development Department, Bihar, Patna
3. The District Magistrate, Vaishali
4. The Deputy Development Commissioner-cum-Chairman, District Rural Development Authority, Vaishali
5. The Director, National Employment Programme, Manrega, Vaishali
6. The Programme Officer, Bhagwanpur Block, District Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate

For the Respondents : Mr. Jitendra Kumar, A.C. to A.A.G.-XIV

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date: 05-10-2016

Heard Mr. Satyabir Bharti, learned counsel appearing
for the petitioner and Mr. Jitendra Kumar, Assisting Counsel to
A.A.G.-XIV for the State.

With the consent of the parties, this writ petition has
been considered with a view to final disposal at the stage of
admission itself.

The petitioner is aggrieved by the order dated
31.12.2012 passed by the Deputy Development Commissioner,
Vaishali whereby a recovery has been directed for a sum of
Rs.5,14,594/- stated to be the alleged loss caused by the petitioner



in execution of the schemes under the Mahatma Gandhi National Rural Employment Guarantee Act (hereinafter referred to as the 'MANREGA') in the capacity of Panchayat Rojgar Sewak, Gram Panchayat Sahta, Bhagwanpur Block in the district of Vaishali. The petitioner is also aggrieved by a subsequent order bearing Memo No. 1484, dated 27.08.2013 whereby he has been relieved from the post, a copy of which is impugned at Annexure-19.

Mr. Bharti, learned counsel for the petitioner while questioning the order impugned at Annexure-10 together with the consequential order of termination at Annexure-19, has submitted that the two orders accompany no reasons nor the explanation given by the petitioner has been discussed. He submits that though proceeding was initiated by the Deputy Development Commissioner by issuance of notice to the Mukhiya, the Panchayat Technical Assistant as well as the Junior Engineer, 'MANREGA' who were also associated with the work but half way through, the proceeding initiated against them was abandoned and the petitioner has been singled out in the process. A copy of the show cause issued to the petitioner and the Mukhiya, the Panchayat Technical Assistant and the Junior Engineer, 'MANREGA' dated 28.11.2012 is annexed as Annexure-6 and the representation of the petitioner is present at Annexure-7.



A counter affidavit has been filed but it is absolutely silent as to the outcome of the notice issued to the Mukhiya, the Panchayat Technical Assistant and the Junior Engineer, 'MANREGA'. The District Programme Officer has very evasively mentioned at paragraph 24 that all concerned with the scheme were issued notices but only the petitioner was found guilty.

I have heard the learned counsel for the parties and have perused the records. Annexure-10 is the recovery order dated 31.12.2012 passed by the Deputy Development Commissioner, Vaishali while Annexure-19 terminates the contractual service of the petitioner as Panchayat Rojgar Sewak as a consequence thereof. In either of the two decision making process, there is complete non-application of mind by the Deputy Development Commissioner for amongst the functionaries attached to the Panchayat and responsible for execution of the schemes, the Deputy Development Commissioner has chosen to hang the pension who is at the bottom of the hierarchy, while exonerating the rest and no reasons are assigned for their exoneration.

Mr. Jitendra Kumar, learned State counsel though has invited the attention of this Court to the nature of responsibility attached to the post of a Panchayat Rojgar Sewak to submit that he is supposed to ensure proper execution of schemes in the manner

required. This may be true but its equally true that the responsibility of the other authorities of the Panchayat superior to him does not get exempted or diluted nor are they absolved there from.

Perhaps realizing the position that under the orders of the District Magistrate, Vaishali, the Senior Deputy Collector, Vaishali was directed to give her report on the ongoing schemes and whose report is present at Annexure-5 series. Although the report is in respect of seven schemes, namely; scheme no. 27 of 2011-12, scheme no. 32 of 2011-12, scheme no. 51 of 2011-12, scheme no. 62 of 2011-12, scheme no. 66 of 2011-12, scheme no. 65 of 2011-12, scheme no. 68 of 2011-12 but the subject matter of the present contest is restricted to four of the said schemes which are scheme no. 27 of 2011-12, scheme no. 32 of 2011-12, scheme no. 51 of 2011-12 and scheme no. 62 of 2011-12. Meaning thereby no irregularity was found in the remaining schemes.

Scheme no. 27 of 2011-12 relates to tree plantation and the allegation is that no plants were found at the place for which the scheme was enforced. While the reply of the petitioner is that the local people have uprooted the plants and for which the Mukhiya had lodged a complaint with the Gram Katchahri but the petitioner was charged causing a loss to the tune of Rs.30,138/-

under the said scheme.

Scheme no. 32 of 2011-12 is in relation to plantation of tree on either side of the road. The allegation is there were three 'Banposak' who were not possessed with job card and pass-book, the sign board was found broken and the condition of the plants were not satisfactory, while there was no hand pump nor arrangement for watering the plants. The petitioner was charged with causing a loss to the tune to Rs.20,448/-.

In so far as scheme no. 51 of 2011-12 is concerned, while the report mentions part implementation thereof and also reflects that certain work was carried out but since no measurement had been carried out nor there was muster roll available hence, an irregularity to the tune of Rs.3,27,500/- was reported. The petitioner has responded thereto by submitting that as against the scheme allocation of Rs.3,27,500/-, there was withdrawal of Rs.1,36,159/- only, which had to be utilized in execution of the scheme. It was also submitted by the petitioner that the value of the work executed was more than the withdrawal.

In so far as scheme no. 62 of 2011-12 is concerned, while the Senior Deputy Collector had reported that the scheme is yet to be executed and a loss of Rs.500/- is reported but the Deputy Development Commissioner has ordered for recovery of

Rs.1,16,000/-.

The show cause reply filed by the petitioner finds no discussion in the order of the Deputy Development Commissioner who has mechanically has ordered for recovery of Rs.5,14,594/- stated to be the alleged loss caused by the petitioner. There is absolutely no discussion as to why the recovery has been directed nor there is any discussion on the explanation given by the petitioner. The order of recovery is dated 31.12.2012 impugned at Annexure-10 and seven months later, a second show cause was issued to the petitioner on 27.07.2013 impugned at Annexure-17 requiring him to file his reply against his termination for the irregularity mentioned in the show cause. The period granted is two days and obviously before the petitioner could file his reply that the Deputy Development Commissioner proceeds to pass the order of termination which was communicated vide memo no. 1484 dated 27.08.2013. Surprisingly the signature on the termination order is of a later date i.e. 29.08.2013. Meaning thereby whereas the memo of the termination order is issued on 27.08.2013, the termination order was signed two days thereafter on 29.08.2013 which succinctly explain the manner in which the proceedings have been handled.

Be that as it may, for the present, I would not express



any opinion on the merits because the order of recovery which is the foundation for the order of termination is non-speaking and in fact contrary to the very report of the Senior Deputy Collector present at Annexure-5. The order also does not deal with the explanation given by the petitioner. There is complete procedural lapse and even when the order proceeds to impose a major penalty on the petitioner, it lacks application of mind. The order of termination which is preceded by a show cause notice present at Annexure-17 grants the petitioner only 48 hours to respond thereto. A time of 48 hours can in no circumstance, be termed as a reasonable opportunity granted against the extreme penalty so imposed.

The decision making process lacks application of mind; takes no notice of the response of the petitioner; makes no reference to the proceeding initiated against the others vide Annexure-6 nor assigns reason why the petitioner has been singled out. The orders impugned in failing to answer these posers, is a perversity personified.

For the reasons discussed above, I am unable to uphold either the order of recovery dated 31.12.2012 impugned at Annexure-10 or the order of termination dated 29.08.2013 which has been circulated vide memo no. 1484, dated 27.08.2013 to the

petitioner.

In the result, the order of recovery dated 31.12.12 impugned at Annexure-10 together with the termination order dated 29.08.2013 impugned at Annexure-19 cannot be upheld and are accordingly quashed and set aside. The matter is remitted back to the Deputy Development Commissioner, Vaishali for proceeding afresh in the matter but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J.)

Kundan

AFR/NAFR	AFR
CAV DATE	
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