

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1492 of 2016

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1. Bhartiya Janta Party, through its State President Sri Mangal Pandey, Son of Sri Awadhesh Pandey, having its office at Virchand Patel Path, P.S. Kotwali, District - Patna. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Government of Bihar, Patna.
2. The Sri Krishna Memorial Development Committee through the Commissioner, Patna Division, Patna.
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate, Patna.
5. The Regional Project Officer, Patna Division, Patna - cum - Incharge, Sri Krishna Memorial Development Committee, Patna.
6. The Accountant, Sri Krishna Samarak Samiti, Patna. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinod Kumar Kanth, Sr. Advocate
Mr. Prabhakar Tekriwal
Mr. Rajesh Kumar Verma
Mr. Harendra Prasad Singh
For the Respondent/s : Mr. Lalit Kishore, Sr. Advocate PAAG,
Mr. Pushkar Narain Shahi, Sr. Advocate, AAG-10
Mr. Mritunjay Kumar, A.C. to A.A.G.-10
Mr. Patanjali Rishi, A.C. to A.A.G.-10

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 22-01-2016

Sri Krishna Memorial Hall, Patna (for short 'the Hall'), situated in the township of Patna, is managed by Sri Krishna Memorial Development Committee (for short 'the Committee') headed by the Divisional Commissioner. Its booking for celebration of 92nd birth anniversary of Late Karpuri Thakur, also known as 'Jan Nayak' is the bone of contention raised in this application. Writ petitioner represents a political party.

The legality of the order dated 15.12.2015 (Annexure-3) is in question issued by the Incharge of the Committee



communicating the regret in allotting or reserving the Hall for the use of the petitioner party for celebration of Jayanti scheduled on 24.01.2016. Vide communication dated 15th January, 2016 (Annexure-6), in response to the representation filed by the petitioner, reasons were explained for non-allotment/reservation of the Hall in favour of the petitioner. The aforesaid communication is also under challenge.

Heard Mr. Binod Kumar Kanth, Sr. Advocate in support of the writ application, Mr. Lalit Kishore, PAAG and Mr. Pushkar Narain Shahi, A.A.G.-10 for the respondents.

It has been submitted by Mr. Kanth that for the reservation/allotment of the Hall on 24.01.2016, a sum of Rs. 86,800/- towards rent of the Hall was deposited under receipt (Annexure-1). On the same day, a sum of Rs. 20,000/- was also deposited as the security money (Annexure-2). The offer, general in nature of the Committee, was accepted by the petitioner inasmuch as consideration money was also paid/deposited. The contract between the Committee which has pervasive control of the State and the petitioner was complete inasmuch as resting thereon the petitioner altered its position to its detriment by disseminating the news of holding the jayanti by the petitioner party on 24.01.2016. The respondent Committee cannot rescind therefrom. The reasons assigned in Annexure-6 are self-



contradictory and not sustainable in law. The another political party had applied for reservation/allotment of the Hall for similar purpose. Such application was filed in February, 2015 and the bank draft dated 1.11.2015 was furnished. He has raised a serious doubt with regard to the said factum. On 26.2.2015, when the application for reservation was filed by another party, the requisite reservation amount could have been deposited as the demand draft presented for payment of the charges/dues was prepared on 1.11.2015. The respondents have acted in questionable manner to benefit the another applicant/party defeating the rightful claim of the petitioner. He further highlights that the demand draft furnished by the petitioner was encashed on 06.01.2016. He has also relied on the statement made in paragraph 6 of the supplementary affidavit in order to contend that the demand draft of Rs. 1,07,335/- was drawn from a different bank on 1.12.2015 which was presented by another claimant/political party. The reservation of the Hall is not a public largess. The Committee which has trappings of the State under Article 12 of the Constitution ought to have acted in fair and transparent manner.

Per contra, it has been submitted by the State Counsel that the application is fit to be rejected since the applicant/party in whose favour the Hall is allotted/reserved for the same day and for similar celebration has not been made party to the writ petition. The



application suffers from incurable defect. He further submits that deposit of money and getting receipt is not *ipso facto* reservation/allotment of the Hall. The petitioner has been indolent in knocking the door of this Court for invocation of extraordinary and discretionary writ jurisdiction at a time when the date for which claim is raised is very close-by, particularly, when in the middle of December, 2015 (vide Annexure-3), it was informed to the petitioner that the Hall cannot be allotted/reserved for the petitioner. He has also produced excerpts of the orders passed by the respondent either for granting allotment or refusing allotment/reservation in the recent past. Copies of the records have been produced to demonstrate that mere deposit of the amount would not be construed as allotment/reservation.

Mr. Kanth, in reply, has submitted that the petitioner would not presume allotment in favour of another applicant/claimant as neither in Annexure-3 nor in Annexure-6, it has been disclosed that the Hall has been reserved/allotted to another applicant/political party. It is incorrect to say that the application suffers from the defect of non-joinder of necessary party.

On a consideration of the rival submissions, it appears the case of the petitioner is that on deposit of the reservation charges and security amount, the petitioner acquired a right as no further order



was required to be passed either allotting or refusing to allot. On the contrary, the respondent State has submitted that merely deposit of the amount at the booking counter and getting receipt would not *ipso facto* amount to allotment/reservation. From the documents presented by the Counsel for the State, what appears that on such application together with deposit of fee/charges, the matter is processed and placed before the Divisional Commissioner who heads the Committee. Only on getting approval of the Divisional Commissioner, the allotment letters are issued. This is a normal procedure adopted by the Committee which cannot be accepted as unreasonable or arbitrary. There may be diverse reasons for the authority to refuse such allotment/reservation. The matter necessarily has to be examined and approved by the head of the Committee. In the case at hand, the respondent vide communication dated 15.12.2015 (Annexure-3) informed the petitioner about their inability to allot/reserve the Hall on the date requested for stating that it was already allotted/reserved on the said date. Of course, in Annexure-6, some reasons subsequently on representation filed by the petitioner, have been disclosed to the petitioner from where it is deduced that the allotment/reservation was made in favour of the another political party. The petitioner, relying on those reasons set out in Annexure-6, has tried to amplify his submission about the arbitrary action of the



respondents in not allotting/reserving the Hall on the said date in favour of the petitioner. However, the Court does not feel it necessary to deal with those submissions as it finds that merely on deposit of the fees/charges, it cannot be said that any such allotment/reservation was made in favour of the petitioner. There is no such communication issued by the respondents in favour of the petitioner. On the contrary, there is a regret letter dated 15.12.2015 issued to the petitioner. The date for which reservation is claimed is 48 hours away. The petitioner was aware of non-allotment/reservation of the Hall in the middle of December, 2015. The cause of action, if any, had arisen but the writ petition was filed only recently to challenge the said refusal. This indolency on the part of the petitioner, in the particular facts of the case, has also obstructed the Court in exercise of its prerogative writ jurisdiction lest an unpleasant situation may arise which the Court is required to guard against.

Coming to the non-joinder of the parties, Mr. Kanth may be right in his submission that neither in Annexure-3 nor in Annexure-6, it was disclosed that reservation/allotment was made in favour of the another claimant/political party. However, on going through Annexure-6, it does appear that there is another claimant/party in whose favour allotment was made for the reasons stated therein. As said, the reasons set out therein have been seriously challenged by the

petitioner but the same does not merit to be discussed in absence of the applicant/party to whom allotment was made as also the fact that the petitioner has not shown any enforceable right vested in it. Non-joinder of the allottee of the Hall may not be a fatal blow but still a blow to the case of the petitioner as put up through this writ application.

These reasons persuade this Court to decline invocation of writ jurisdiction to grant the relief prayed for in the writ application. Dismissed.

(Kishore Kumar Mandal, J)

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