

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.21567 of 2014**

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Kumkum Devi, Wife of Munna Singh, Resident of village - Kumaripur, P.S. Manihari, District – Katihar.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Development, Government of Bihar, Patna.
3. The District Magistrate, District – Katihar.
4. The Deputy Development Commissioner, District Katihar.
5. The Senior Deputy Collector, District Law Section, District - Katihar
6. The Block Development officer, Manihari, District – Katihar.

.... .... Respondent/s

With

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**Civil Writ Jurisdiction Case No. 17311 of 2015**

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Mouleshwar Sharma, Son of late Badar Sharma, Resident of Village- Bhandhar Tal, P.S.- Barari, District-Katihar.

.... .... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Rural Development, Government of Bihar, Patna
2. The District Magistrate, District-Katihar.
3. The Deputy Development Commissioner, District-Katihar.
4. The Senior Deputy Collector, District Law Section, District-Katihar.
5. The Block Development, Officer, Manihari, District Katihar.

.... .... Respondent/s

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**Appearance :**

**(In CWJC No. 21567 of 2014)**

For the Petitioner/s : Mr. Bimal Kumar

For the Respondent/s : Mr. N. Hoda Khan, SC-18

**(In CWJC No. 17311 of 2015)**

For the Petitioner/s : Mr. Bimal Kumar

For the Respondent/s : Mr. A. N. Deo, SC-26

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 21-04-2016**

Heard Mr. Bimal Kumar, learned counsel for the  
  
petitioners on the two writ petitions, Mr. N. H. Khan, SC-18 for

the State in CWJC No.21567 of 2014 and Vijay Bharti A.C. to S.C.-26 for the State in CWJC No.17311 of 2015.

Since the order impugned in the two writ petitions is the same hence they have been taken up together and with the consent of the parties are being disposed of by a common judgment at the stage of admission itself.

Whereas the petitioner in CWJC No.21567 happens to be the Mukhiya, Gram Panchayat Raj Kumaripur in the district of Katihar, the petitioner in CWJC No.17311 of 2015 is the Panchayat Secretary of the said Gram Panchayat Raj, Kumaripur and both are aggrieved by the decision of the District Magistrate, Katihar as found in his order dated 13.6.2014 impugned in the respective writ petition whereby the two petitioners have been charged with diversion of the funds allotted under the 13<sup>th</sup> Finance Commission for construction of the Anganbadi Kendra but were used for the purpose of installation of solar lights and hand pumps. While upholding the charge, the District Magistrate has ordered for recovery of the amount so spent from the petitioners.

Considering the nature of the dispute as well as the fact that the same order is challenged in the two writ petitions, I would be referring to the pleadings as occurring in CWJC No.21567 of 2014 for the sake of convenience unless specifically clarified in

reference to the other writ petition.

I have heard learned counsel for the parties and I have perused the records.

The issue stands discussed herein above and require no further reiteration. The matter briefly stated is that some funds were allotted to the panchayat in question under the 13<sup>th</sup> Finance Commission in the year 2010 and which funds though meant for construction of Anganbadi Kendra but have been utilized by the petitioners herein for installation of solar lights and hand pumps for the benefit of the villagers pursuant to the resolution passed in the Gram Sabha held on 2.10.2010, a copy of which is placed at Annexure-1.

It is an admitted fact and not in dispute that the funds so allotted under the 13<sup>th</sup> Finance Commission has been utilized for the installation of solar lights and hand pumps in pursuance of the resolution no.5 and 6 passed in the said Gram Sabha. It is also not in dispute that the money has not been misappropriated rather has been purposefully utilized for the benefit of the Panchayat. The only objection that has been raised is that it ought not to have been spent on solar light/hand pumps since it was meant for construction of Anganbadi Kendra. Now whereas it is specifically stated by the petitioner in paragraph-13 of the writ petition that



following the resolution passed in the Gram Sabha, the work in question was completed and the amount disbursed on 16.12.2010 vide Annexure-4, it is also explained in paragraph-14 and 15 of the writ petition that the guidelines on the utilization of the fund allowed under the 13<sup>th</sup> Finance Commission though was issued by the Principal Secretary, Panchayati Raj Department vide his letter dated 7.10.2010 placed at Annexure-5 but was received in the office of the District Magistrate on 30.12.2010 and though is stated to have been circulated by the Zila Parishad on 3.01.2011 vide memo no.1 but in fact the said guideline was never communicated to the Panchayat either by the District Magistrate or the Zila Parishad. These three relevant paragraphs of the writ petition goes un-contested. Meaning thereby, the Panchayat has bonafidely taken a decision to install solar lights and hand pumps for the benefit of the villagers, acting within the powers conferred under 'Bihar Panchayat Raj Act, 2006' (hereinafter referred to as 'the Act'). It is also not disputed that the funds so made available at the disposal, has been utilized for the benefit of Panchayat and not misappropriated.

Although a counter affidavit has been filed by the District Magistrate who is the author of the impugned order but he does not choose to contest the statement made by the petitioner in

paragraph-15 of the writ petition that the guidelines issued by the Principal Secretary never reached the panchayat. The petitioner had earlier come before this Court in CWJC No.4055 of 2012 when the process for recovery was initiated and the matter was remitted back to the District Magistrate for its disposal in accordance with law vide order present at Annexure-9.

The petitioner-Mukhiya has clarified the entire matter before the District Magistrate, Katihar vide Annexure-10 but the explanation has been rejected on a mechanical approach that the fund meant for Anganbadi Kendra has been diverted by the petitioners for other purposes. This Court fails to appreciate as to how a manner of utilization of a fund allotted, can be a subject matter of recovery when it is not in dispute that it was utilized for the benefit of the panchayat.

The money allotted under the 13<sup>th</sup> Finance Commission even if meant for construction of Anganbadi Kendra, was admittedly utilized for the benefit of the Panchayat and it is not the allegation of the respondents that the money has been misappropriated by the petitioners.

Secondly whereas it is the specific stand of the petitioner that the guidelines so issued in respect of the manner in which the funds allotted under the 13<sup>th</sup> Finance Commission is to be

utilized, never reached the Panchayat, this statement is not contested.

Thirdly the petitioners alone cannot be charged with diversion of funds especially where the work executed was under a resolution passed by the Gram Sabha in a duly constituted proceeding.

The counter affidavit filed on behalf of the District Magistrate is silent on all these issues and which is also reflected in the impugned order. Plainly speaking the action initiated is arbitrary, mechanical and does not satisfy prudence expected.

For the reasons aforementioned the order dated 13.06.2014 passed in Miscellaneous Case No.79 of 2012-13 by the District Magistrate, Katihar cannot be upheld and is accordingly set aside.

The two writ petitions are allowed.

**(Jyoti Saran, J)**

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