

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10332 of 2013

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Smt. Anita Devi Wife Of Sri Bijay Singh Ex-Mukhiya, Gram Panchayat Raj, Sherchakla, At & P.O. Shergarh, Police Station - Gogari, District - Khagaria

.... Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government Of Bihar, Patna
2. The Chief Secretary, Government Of Bihar, Patna
3. The District Magistrate, Khagaria, District - Khagaria
4. The Certificate Officer, Khagaria, District - Khagaria
5. The Block Development Officer, Gogari Block, & P.S. - Gogari, P.O. - Gogari, District - Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Narayan Singh, Senior Adv.
Mr. R.N. Poddar, Adv.

For the Respondent/s : Mr. Amit Bhushan, AC to GP -17

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

9 01-08-2017 Heard learned counsel for the petitioner and the learned counsel for the State.

The petitioner seeks to quash the Certificate Notice dated 05.02.2013 whereby the Certificate Officer (respondent No. 4) has initiated a Certificate Case No. 03/2012-13 (Block Development Officer Vs. Smt. Anita Devi) as per the direction of the District Magistrate (respondent no. 3).

Learned counsel for the petitioner submits that an altogether false and malicious prosecution has been launched against the petitioner as the impugned notice has been issued on the basis of the Enquiry report which was conducted behind the



back of the petitioner. It is further submitted that certain irregularities were found in the installation of Solar Lights for the period 2007-08, 2008-09 & 2009-10 in the Sherchakla Gram Panchayat, Block – Gogri in the district of Khagaria. It is further submitted that the petitioner received a notice dated 20.07.2012 as contained in Memo No. 1522 in which he was called upon to answer the allegations with regard to the aforementioned illegalities in the installation of Solar Lights.

Learned counsel for the petitioner further submits that petitioner was the Mukhiya of the concerned panchayat between the period 2006-10 and the enquiry which was conducted with regard to such irregularities of installation of Solar Lights was done in the year 2012. It is further submitted that in the said enquiry neither was any notice given to the petitioner nor was any other member of the Gram Panchayat involved in the same. The Conjoint Committee which was constituted for the said purpose, conducted the enquiry and that too without involving any member of the Gram Panchayat or the petitioner. Learned counsel for the petitioner, thus, submits in view of the fact that such enquiry having been conducted behind the back of the petitioner, the same stood vitiated as it is against the Principles of Natural Justice and cannot be used to the detriment of the petitioner. He further



submits that the notice dated 20.07.2012 was duly answered by the petitioner but the District Magistrate without considering the same has proceeded to file the Certificate case against the petitioner which has been numbered as Certificate Case No. 3/2012-13, accordingly, the notice dated 05.02.2013 containing a demand of Rs. 6,82,000/- has been sent to the petitioner.

Learned Senior counsel appearing on behalf of the petitioner submits that issuance of the notice is not based on Enquiry report which in itself vitiated for being in violation of the Principles of Natural Justice and any order which followed pursuant thereto stands vitiated could not be sustained in the court of law. He further submits that neither was the petitioner's representation filed thereafter considered by the concerned respondents and without passing a reasoned order on the petitioner's representation, the respondent has proceeded to file the certificate demand before the Certificate Officer resulting in the issuance of the impugned notice.

Two sets of counter affidavit have been filed on behalf of the respondent-State of Bihar in which they have categorically stated that the petitioner was involved in the racket of setting up a Solar Lights and for the said reason, the petitioner was issued notice on the point as to whether she was provided an



opportunity of being heard at the stage of Enquiry. It has been submitted that due opportunity has been provided to the petitioner vide letter no. 1522 dated 20.07.2012 by the Block Development Officer, Gogri and in reply thereto the petitioner had also submitted his representation. However, the same was found to be unsatisfactory and as such, the certificate case was initiated against the petitioner and notices have been issued to her.

It appears that the respondents have failed to pass any order on the reply filed by the petitioner.

Learned counsel for the State submits that the petitioner chose not to appear in the certificate proceeding and have straightway come to this court seeking equitable and efficacious remedy under Article 226 of the Constitution of India.

Be that as it may, this Court cannot appreciate the action of the respondents in conducting an enquiry behind the back of the petitioner. This Court, however, feels that though the petitioner had filed a representation giving in details the reasons why he was not involved in the racket of installation of Solar Lights and that the enquiry which was conducted behind the back of the petitioner could not be used to indict her, yet the authorities failed to take notice of the same and have filed a requisition in the certificate case raising a public demand of Rs. 6,82,000/-. Such



demand, per se, would appear to be illegal as being in clear violation of the Principles of Natural Justice and against the settled principles of law. It is, thus, patently and manifestly a clear violation of the Principles of Natural Justice and the impugned order passed by the respondents are also against the several judgments and pronouncements of this Court in this regard.

It appears that the impugned notice has been passed without considering the show cause filed by the petitioner before the Block Development Officer which also is wholly illegal and arbitrary. Accordingly, this Court is of the considered opinion that the impugned notice dated 05.02.2013 in Certificate Case No. 3/2012-13 stands quashed.

Accordingly, the writ application stands allowed. However, it shall be open for the respondents to proceed in accordance with law.

(Anjana Mishra, J)

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