

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.860 of 2017

Manoj Kumar Singh, aged about 52 years, son of Late Ramesh Chandra Singh, R/o Village+Panchayat- Kurmuri, P.S- Sirahata, District- Bhojpur at Ara.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Panchayat Raj Department, Government of Bihar.

.... Respondents

with

Civil Writ Jurisdiction Case No. 6094 of 2017

1. Guraru Mukhiya Sangh Through Chairman , Sri Gupteshwar Yadav,aged about 52 years Son of late Kamdeo Yadav Village- Karma, P.S. Konch, District Gaya, Mukhiya, Rouna Gram Panchayat ,Block Guraru.

2. Konch Mukhiya Sangh through Chairman Sri Shiv Kumar Chauhan Aged about 41 years Son of Raj Keshwar Chauhan Goharpur tola Balwa par, p.s. Konch Goharpur, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.

.... Respondents

Appearance :

(In CWJC No.860 of 2017)

For the Petitioner/s : Mr. Dinu Kumar, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. Deepak Kumar, Adv.

For the Respondent/s : Mr. Binod Kumar, AC to GP10

(In CWJC No.6094 of 2017)

For the Petitioner/s : Mr. Dinu Kumar, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. Deepak Kumar, Adv.

For the Respondent/s : Mr. Pratik Kumar Sinha, AC to GA5

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-05-2017

Heard Mr. Dinu Kumar, learned counsel for the petitioners in
the two writ petitions, who appears alongwith Mr. Deepak Kumar,
Advocate on record, Mr. Binod Kumar, AC to GP-10, for the State in



C.W.J.C.No. 860/2017 and Mr. Pratik Kumar Sinha, AC to GA-5, for the State in the second writ petition.

Since the writ petitions raise common issue of fact and law, hence they have been heard together and with consent of the parties, are being disposed of by this common judgment at the stage of admission.

The petitioners while questioning the letter bearing Memo No. 795 dated 26.9.2016 of the Secretary to the Government, Panchayati Raj Department, addressed to the Accountant General, Bihar, Patna, whereby a Scheme by the name of Mukhyamantri Gramin Gali Nali Pakkikaran Nischay Yojna has been forwarded, also seeks a direction restraining the respondents from utilizing any amount year-marked for the Panchayats allotted under the 14th Finance Commission and the 5th State Finance Commission, to carry out the objectives of Mukhyamantri Gramin Gali Nali Pakkikaran Nischay Yojna.

Mr. Dinu Kumar, learned counsel for the petitioners, cutting short his argument, has relied upon a Division Bench judgment of this Court arising from C.W.J.C.No. 19591/2016 (Saran Zila Mukhiya Sangh) and analogous cases to submit that this issue came up for consideration before the Division Bench and when this Court on examination of 73rd amendment to the Constitution at Part- IX has



held that the Government by issuing executive instructions cannot curtail the powers of the local Panchayat as provided under the Constitution as well as under the Bihar Panchayati Raj Act, 2006. Mr. Dinu Kumar has referred to paragraph 2 of the judgment to demonstrate that the matter in issue was identical and has proceeded to refer to the opinion of the Bench present at paragraphs 12, 13, 14, 17, 18, 21, 22, 23 and 24, to submit that the present writ petitions can be disposed of in the light of the liberty so granted by the Division Bench to the petitioners of the said cases.

Mr. Binod Kumar, learned State Counsel, while trying to distinguish the relief claimed in the present batch of writ petitions to submit that the letter in question impugned herein was not the subject matter of the writ petitions put for consideration before the Division Bench, however, does not object to disposal of the writ petitions with the liberty, on similar terms, as granted by the Division Bench. For the sake of convenience I deem it proper to record the matter in contest put for consideration before the Division Bench as well as the opinion expressed by the Bench thereon and which is reproduced hereinbelow:

12. The State of Bihar Promulgated two Schemes, namely *Mukhya Mantri Gramin Pay Jal Nischay Yojana* and the *Mukhya Mantri Gramin Gali-Nali Pakkikaran Nischay Yojana* as is contained in Annexures- P/2 and 3. The first Scheme is to provide for house to house



drinking water facility and connection at the Panchayat level and to implement the scheme of providing clean and pure drinking water through pipe to each house in the village level, the scheme has been formulated and details various provisions for implementing the scheme. It is not necessary to refer to various provisions of the Scheme which include functioning of the Scheme at the State level, the Divisional Level, the District level, the Gram Panchayat Level etc. However, after laying down and prescribing instructions with regard to functioning of the Schemes at the Gram Panchayat level vide Clause 4.4 of the Scheme through the Standing Committees formulated under Section 25, particularly the Public Works Committee constituted under Section 25(vi), from Clause 4.5., the Scheme in question contemplates a provision for implementation of the Scheme at the Ward Level and while doing so, a different Committee known as the 'Ward Vika Samiti' has been constituted. This Samiti consists of seven members of the Ward who are to be elected by the Ward Sabha for a period of two years. They have been entrusted with the responsibility of implementing the Scheme at the Ward level. It is also indicated that the Committees shall consist of a President and Vice-President to be elected by the seven Ward Members. It is indicated that the members shall be the resident of the Ward. Provisions of reservation for Scheduled Caste, Scheduled Tribe and Women are contemplated. There is a provision for appointment and selection of a Ward Secretary whose qualification and



other particulars are prescribed and it is held that the Samiti constituted shall be by election for a period of two years. Thereafter, the powers, duties and functions of this Samiti are contemplated under Clause 4.5.2. of the Scheme in question.

13. Similarly, in the second Scheme, namely Mukhya Mantri Gramin Gali-Nali Pakkikaran Nischay Yojana, also after contemplating various provisions for making of pavements, repairing and maintenance of Nali and Gali in the village level, a Ward Level Committee has been constituted. From clause 4.5 which is similar to the Ward Vikas Committee constituted in the earlier Scheme.

14. The question, primarily, therefore, to be considered in these writ petitions are as to whether the constitution of such a Committee, namely, the "Ward Vikas Samiti", is in accordance to the requirement of law. This is the moot question to be answered in all these writ petitions. For doing so, we are required to take note of the constitutional provisions and that of the Act of 2006.

17. If we analyze the schemes of the Act of 2006 in the backdrop of constitutional mandate and the various entries made in Eleventh Schedule, we find that in the State of Bihar, the Panchayats have been constituted at the district, intermediate and the village levels, the functions of the Panchayat are contained in Section 22 and under Section 25(1)(vi), the Standing Committee known as the 'Public Works Committee' has been entrusted with the responsibility of maintenance of water



supply, roads and other means of communication, rural electrification and relates works etc. That being so, it is crystal clear that under the Act of 2006, i.e. by virtue of a legislation, statutory committees and bodies have been created for carrying out the work of the Panchayat. Under Section 156 of the Act of 2006, the State Government is empowered to issue directions to lawfully carrying out the works relating to national policies, Government Schemes etc. and in this regard issue instructions to the Panchayat. The Policies contained in Annexures P/2 and 3 are, therefore, nothing, but instructions issued by virtue of the powers available to the State Government under Section 156 of the Act of 2006. However, while doing so, apart from issuing the various instructions, the State Government has created a Special Committee known as "Ward Vikas Samiti" for carrying out the work pertaining to implementations of the two schemes contained in Annexures P-2 and 3. If we go through the Schemes, particularly, those provisions pertaining to implementation of the Schemes in the Ward Level, we find that by this executive instructions, "Ward Vikas Samiti" has been created consisting of members of the Ward to be elected by the Ward Sabha for a period of two years, the constitution of the Committee is contemplated, the manner of the constitution is laid down, with functions and power of the Samiti, even a provision for appointment of a Secretary to the Samiti is laid down. This admittedly has been done on the basis of



executive instructions issued under section 156 of the Act of 2006. However, for implementing the purpose of the Scheme, namely water supply, maintenance of road, culvert etc., already a statutory committee has been created under the Act of 2006, namely, the Standing Committee as contemplated under Section 25 and the Public Works Committee is already functioning in the area for the same purpose for which the Ward Samiti is constituted. That being so, it is a case where for carrying out the functions of the Act of 2006, in the Panchayat by an executive instructions allegedly on the basis of delegation of power, committees have been created which are not contemplated under the Act of 2006. Without amending the Act of 2006, creating a Committee by an executive order, in our considered view, is impermissible. This would amount to tampering with the provisions of the Act of 2006 and establishing and creating Samiti to carry out the constitutional and statutory mandate of the Act of 2006 without sanction of law. Once the Statutory Committee under the Act of 2006 was already in existence for implementing the Scheme, the State Government could not by an executive instruction create another Committee which is neither contemplated nor provided for under the Statute.

18. After analyzing the provisions of the Constitution as detailed hereinabove and the Act of 2006, we have no hesitation in holding that the Constitution prescribes a Scheme for conferring with the power of Local Self-Government after giving complete autonomy to the



Panchayat and once the Statutory body, like the Panchayat, is created with specific provisions for creation of Committees and with specific statutory powers available, then contrary to the statutory provision, in exercise of executive power, the State Government cannot do something which runs contrary to the Scheme of the Act of 2006.

21. The contention of Sri Lalit Kishore to say that the State has acted in exercise of the power of delegated legislation and the powers available under Section 156 of the Act of 2006 cannot be accepted. Even though while judging the validity of a delegated legislation and an executive action taken, this Court is required to exercise judicial restraint and a presumption has to be drawn in favour of the constitutionality or validity of an Act, but if it is found that the Act is in clear violation to any constitutional or legislative provision or a parent statute, like the Act of 2006, then the Act can be declared as un-constitutional or illegal. That is the principles of law which is recognized by various judgments and if we analyze the act of the State Government in creating the "Ward Vikas Samiti" for implementing the Scheme in question, we are of the considered view that it is impermissible. The act of creating a Committee or an authority which is not contemplated or provided for under the Act of 2006 amounts to destroying the constitutional mandate of empowering the Panchayat as an institution of Self-Government. When the Panchayat as an institution of



Self-Government is functioning in accordance to the Act of 2006 and when various committees under the Panchayat are functioning for implementing the Scheme, the Government in the garb of issuing instructions or an executive action cannot create a body or an authority which is not provided for either in the Constitution or in the Act of 2006, and therefore, entrusting the work of implementing the Scheme at the Ward Level through a "Ward Vikas Samiti", in our considered view, amounts to violating the basic scheme of the Act of 2006 and the same is not permissible. To that extent, the writ petitions have to be allowed and the provisions contained in Annexures P-2 and 3 for creating the "Ward Vikas samiti" and entrusting the power to the "Ward Vikas Samiti" is clearly impermissible and to that extent, both the instructions contained in Annexures P-2 and 3 are quashed. However, the other instructions contained in these documents being not under challenge and *prima facie* being in accordance to the powers available to the State Government under Section 156 of the Act of 2006 need not be interfered with at this stage in these petitions.

22. Having held so, we are now required to consider the amendment made and prayer made therein. The prayer made is that the funds made available by the 14th Finance Commission for implementation of various schemes are being mis-utilized and the Circulars and orders passed by the Government of India and the Finance Commission are being violated. However, a



detailed reply has been filed by the State Government and from para 5 onwards of the reply it is indicated by filing various documents, including the communication made by various Ministries and authorities of the Government of India that there is no violation.

23. To examine the question as to whether the funds granted by the 14th Finance Commission are being misused and the Schemes are being implemented in violation to the recommendation made by the Finance Commission, it is absolutely necessary that the Government of India in the Ministry of Finance and various other authorities in the Government, who are responsible for implementing the recommendations of the 14th Finance Commission, are made parties, they noticed and it is only after hearing them, can a decision in this regard be taken. Except for filing an application for amendment without impleading the respective departments or authorities and the officers of the Government of India, we are not inclined to go into the prayer made by amending the writ petitions. The said issue is left open and the petitioners are granted liberty to take up the issues with the competent authorities of the Government of India or to file a properly constituted petition after impleading all necessary and requisite parties. The prayer made to that extent cannot be considered in these petitions.

24. Accordingly, we allow these petitions in part. The Schemes in question as contained in Annexure P/2 dated 23.9.2016 and P/3 dated 25.10.2016, so far they direct



for creation of "Ward Vikas Samiti" and entrusts the work to the "Ward Vikas Samiti" for carrying out the purpose of the Scheme are quashed. The State Government is granted liberty to either get the Schemes implemented through the Committees already functioning under the Act of 2006 or to take such steps as are permissible in law for implementing the Scheme."

A cursory glance of the opinion would confirm that the Ward Level Committee constituted under the two Schemes have already been quashed by the Division Bench.

Having heard learned counsel for the parties and considering the limited relief prayed by the petitioners herein I deem it proper to dispose of the two writ petitions in terms of the liberty so granted by the Division Bench to the petitioners in Saran Zila Mukhiya Sangh (supra) and analogous cases.

Both these writ petitions are accordingly disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.06.2017
Transmission Date	NA

