

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1548 of 2017

IN

Civil Writ Jurisdiction Case No. 5756 of 2017

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The Estimate Committee of the Bihar Legislative Assembly through the Chairman.

.... Respondent / Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Municipal Administration, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Patna, District – Patna

..... Respondents / Respondents 1st Party

5. Kaushal Kaushik, son of Late Jagdish Prasad, Resident of Village- Nisarpura, P.O.- Amarpura, P.S.- Naubatpur, District- Patna, Presently Chief Councilor, Nagar Panchayat Naubatpur, P.O. and P.S.- Naubatpur, District- Patna.

..... Petitioner – Respondent 2nd Set.

.... Respondents

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Appearance:

For the Appellant/s : Mr. P.K. Shahi, Sr. Advocate and
Mr. Kaushal Kumar Singh, Advocate.

For the Respondent/s : Mr. S.B.K. Mangalam, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-02-2018

Challenging the order dated 10.10.2017 passed by the
learned single Judge in CWJC No. 5756 of 2017, the Estimate
Committee of the Bihar Legislative Assembly (hereinafter referred to



as ‘the Estimate Committee’) has preferred this intra-court appeal. By the impugned order the learned Single Judge has been pleased to reject the preliminary objection raised by the Estimate Committee as to the bar of interference by the courts in view of the constitutional mandate engrafted under Article 212 of the Constitution of India. The writ petitioner, who happened to be the Chief Councillor of the Nagar Panchayat, Naubatpur, is respondent no. 5 in the present appeal.

2. We have heard Sri P.K. Shahi, learned Senior Advocate assisted by Sri Kaushal Kumar Singh, learned Advocate on behalf of the appellant and Mr. S.B.K. Mangalam, learned Advocate representing the writ petitioner – respondent no. 5. The Writ Petition has been preferred seeking the following reliefs:-

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the 159th Report and the recommendation of the Respondent Estimate Committee of the 16th Bihar Legislative Assembly dated Nil, whereby and where under direction has been issued to take action against the erring officials (Adhyaksh, Executive Officer) Government Servants and the Agency for violation of the provisions of the Bihar Municipal Act and Bihar Financial Rules on the ground that in view of the provisions contained under Section 66 of the Bihar Municipal Act, 2007, the Executive Committee of Bihar Legislative Assembly does not have



any jurisdiction to conduct an enquiry in the affairs of a Municipal Government and, therefore, the report and the recommendation of the aforesaid Committee is totally uncalled for and without jurisdiction.

(II) For a declaration that even if the said Committee is empowered to hold enquiry in the affairs of a Municipal Government, it cannot restrict its direction for action against the selective rather it should have directed for action against the high officials of the State Government and the Central Government, who had approved these schemes and no fault was found with the decisions of the Naubatpur Nagar Panchayat.

(III) For a further declaration that if the decisions, which in the opinion of the Committee were erroneous decisions, was the decision of the Municipal Board and it was approved by the State Level Coordination Committee (SLCC) and the Central Sanction Committee (CSC), for any such irregularity, the action has to be taken either against all or against none, the recommendation of the Respondent Committee is illegal and, therefore, cannot be sustained in the eye of law.

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”



Apparently the writ petitioner is aggrieved by the recommendations of the Estimate Committee as contained in its' 159th report submitted to the Bihar Legislative Assembly.

3. Before the learned single Judge a preliminary objection was raised on behalf of the present appellant pointing out that in view of the constitutional bar created under Article 212 of the Constitution of India the challenge made to the 159th Report of the Estimate Committee containing certain recommendations to the 16th Bihar Legislative Assembly cannot be entertained by the Writ Court. Submissions were advanced based on the statements, *inter alia*, made in Paragraphs 5 and 6 of the Counter Affidavit filed on behalf of the Estimate Committee (respondent no. 5) which read as under:-

“5. That the reliefs prayed for in the writ petition under reply are fit to be rejected as being not sustainable in the eyes of law because the recommendation of respondent committee is limited only to the extent of getting the matter enquired and investigated by competent agency and to act upon those responsible whoever found guilty for irregularities in implementation of certain Programme and government schemes for violation of the provisions of the Bihar Municipal Act and Bihar Financial Rules, hence the mere recommendation as contained in the Report (Annexure P 8 of writ application) is well within the jurisdiction of the respondent committee to prevent loot and embezzlement



of Public money and it does not come within the purview of Section 66 of Bihar Municipal Act 2007 as it is finally for the State Govt. who has to get the matter investigated and enquired and to act upon the same, hence ultimately the action taking authority is State Govt. itself.

6. That the recommendation of committee is bonafide, lawful, judicious and well within its jurisdiction as its function and duties are under the rules as framed and adopted in its 1st meeting held on 4th of August 1956 under Rule 199 (changed Rule 240) of Procedure and conduct of Business Rules of Bihar Legislative Assembly and moreover Article 212 of Constitution of India makes this writ application totally not maintainable as Legislative conduct of business is not open to judicial interference hence the grounds taken by petitioner as substantial question of law are not tenable as the committee too are integral part of legislature and when legislature is not in session, committee works with same mandate and its recommendations are placed on the table of House on 31.3.17.”

4. The learned single Judge has upon consideration discarded the preliminary objection for the reasons *inter-alia* as under:-

“..... The Court would further add that the Committees, which may be working on the directions and under the



authority of the House, cannot be equated with the “House” for the purposes of invoking the protection in Article 212 of the Constitution of India. In the present case, the challenge is to the jurisdiction of the Estimates Committee of the Bihar Legislative Assembly with regard to giving directions to the district officials relating to a matter which has been taken up by them and further follow up action by the State authorities. In such background, the Court has no hesitation to hold that the objection raised by Mr. P. K. Shahi, learned senior counsel with regard to maintainability of the writ application in view of bar of Article 212 of the Constitution of India cannot be sustained and is accordingly overruled. Further, though the present matter does not raise such issue but the Court would only indicate that even the bar of Article 212 of the Constitution of India relates to alleged irregularity of procedure and not to the merits of a matter and by now it is well settled that even the merits of a proceeding of the Legislature of a State are open to judicial review, a classic example of the same being judicial review of a ‘No Confidence Motion’ by the State Legislature, which is undisputedly a proceeding of the Legislature of a State.”

5. Before us, the learned Senior Counsel representing the Estimate Committee (appellant) has submitted that the Estimate Committee being a statutory committee within the meaning of Rule



185 of the Rules of Procedure and Conduct of Business in the Bihar Legislative Assembly (hereinafter referred to as 'the Rules') has submitted a report to the Legislative Assembly and the said report once laid down before the Legislative Assembly / House of the Bihar Legislature, the same cannot be a subject matter of discussion or, for that purpose, a subject matter of challenge in a Writ Application under Article 226 of the Constitution of India. Learned Senior Counsel submits that the immunity granted under Article 212 of the Constitution of India shall be available to the report submitted by the Estimate Committee as the same is now a subject matter of the proceedings in the House of the Bihar Legislature. According to learned Senior Counsel, in fact, any challenge to the said report of the Estimate Committee would amount to a challenge to the validity of the proceedings in the Legislative Assembly where the said report is under consideration, therefore, such situation must be avoided at this stage.

6. Learned Senior Counsel further submits that the grievance of the writ petitioner that the Administrative Department of the Government has taken action solely based on the recommendations of the Estimate Committee is not correct and, for that purpose, attention of this Court has been drawn towards Annexures R2/D & R2/E at Pages 20 & 21 respectively of the



Counter Affidavit filed on behalf of the respondent no. 2. Submission is that the *prima facie* view for purpose of lodging of an F.I.R. to investigate into certain omissions and commissions in the matter of implementation of IHSDP Project in Naubatpur Nagar Panchayat has been taken once those facts came to the notice of the Administrative Department, i.e., the Urban Development Department in this case from the report received through the Executive Officer, Naubatpur.

7. Learned Senior Counsel, therefore, submits that there is a fallacy in the argument of the writ petitioner that the Administrative Department has lodged F.I.R. only because of the recommendations of the Estimate Committee. It is reiterated that the report of the Estimate Committee is still to be accepted by the Legislative Assembly and it would be for the House of Legislature to accept or not to accept the recommendations of the Estimate Committee based on which further directions may be issued by the House.

8. On the other hand, Sri S.B.K. Mangalam, learned counsel representing the writ petitioner – respondent no. 5 submits that it is in fact the recommendations of the Estimate Committee which has been the sole basis for lodging of an F.I.R. and, therefore, the Writ Court has rightly rejected the preliminary objection raised on behalf of the Estimate Committee.

Consideration



9. Having heard learned counsel for the parties and upon perusal of the records, we are of the considered opinion that since the recommendations or report of the Estimate Committee are still subject matter of consideration and discussions in the House of Legislature, at this stage any challenge to the report and recommendations of the Estimate Committee by filing a Writ Application under Article 226 of the Constitution of India cannot be allowed.

10. We are of the opinion that if the report is lying in the exclusive domain of the House of Legislature, any observation by a court of law on such report must be avoided and, to that extent, the bar created under Article 212 of the Constitution of India would definitely come into play.

11. Having said so we would, however, further add that the contention of the writ petitioner that even though the report of the Estimate Committee is yet to be accepted as it is, the Administrative Department has been acting solely on the basis of the recommendations of the Estimate Committee and not on the basis of any other independent or corroborative materials gathered by the Department on its own may certainly be looked into by a court of competent jurisdiction.

12. The two issues which have been sought to be mixed up in the present Writ Application must be segregated. From the reliefs



prayed for in the Writ Application, we find that the writ petitioner has challenged the report and the recommendations of the Estimate Committee and a Writ of Certiorari has been sought for, several other reliefs have also been sought for in the Writ Court which may necessitate discussions in respect of the report of the Estimate Committee, in our opinion, the Writ Court would not be justified in entertaining any challenge to the jurisdiction, report and recommendations of the Estimate Committee and / or in giving any observation by entering into the discussions on the merit of the report and the recommendations of the Estimate Committee because such discussions are still due in the House of Legislature. This part of the relief prayed for in the Writ Application would, therefore, be covered by the bar created under Article 212 of the Constitution of India.

13. Rest part of the Writ Application whereunder the petitioner has a contention that the Administrative Department has not collected any independent material and has proceeded solely on the basis of the recommendations of the Estimate Committee, as contained in the report submitted by the said committee to the House of Legislature may only be considered without touching upon the jurisdiction or entering into any discussion on the report and recommendations of the Estimate Committee.

14. The impugned order passed by the learned single



Judge would, therefore, stand modified to the extent indicated hereinabove.

15. The Letters Patent Appeal is thus disposed off.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.02.2018
Transmission Date	N/A

