IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7688 of 2017

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1. Bihar Pradesh Zila Parishad Adhyaksh Sangh Through Its Convener Priyanka Jaiswal W/o-Pawan Kumar Jaiswal, R/o Vill + P.O.-Phulwariya, P.S.-Dhaka, Dist.-East Champaran.
2. Sunil Kumar Singh, Son of Udit Narayan Manday, R/o Village +P.O.-Soutadin, P.S.-Belhar, District-Banka.
3. Nathuni Ram, Son of Late Sitaram Paswan, R/o Village + P.O. + P.S.-Darihar, District-Rohtas
4. Prabhu Sah, S/o Basant Sah, R/o Vill + P.O.-Bhaikunthpur, P.S.-Rajapakar, District-Vaishali
5. Anju Devi, Husband of Kumar Rajnish, R/o Vill-Lahladpur, P.O.-Mohanpur, P.S.-Gauriyak, District-Patna.
6. Arhul Devi, Wife of Gajendra Prasad Yadav, R/o Vill-Chakla, P.S.-Saur Bazar, Dist.-Saharsa.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Kumar Alok, SC-7

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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: 25-04-2018

The present writ application has been preferred for the following reliefs:-

> *"A. For quashing office order vide memo no.4039 dated 19.04.2017 issued by Secretary, Panchayati Raj Department, Govt. of Bihar as contained in Annexure-3 by which decision has been taken in stopping Zila Parishad & Panchayat Samiti to utilise devolution fund allotted under 5th*

Finance Commission in relation to Mukhiyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna and fund allotted under devolution in relation to Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna will be executed by ward development committee on priority basis through panchatat..

B. Also for directing to not give effect of the order vide No.4039 dated 19.04.2017 as contained in Annexure-3 in way of utilizing the fund of allotted to Zila Parishad and Panchatat Samiti under devolution after approval of 5th State Finance Commission for the Financial year 2016-17 in execution of Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna as usual..

C. Also for commanding the respondent to allow Zila Parishad & Panchatat Samiti in the State of Bihar to utilize the devolution fund amounting to Rs.73.85 crore on Panchayat Samiti & 147.71 Crore for Zila Parishad for financial year 2016-17 allotted on 23.1.2016 and 29.03.2017 as per its guideline.

D. Also for restraining the State respondent to not utilize devolution fund allotted to the Panchatat Samiti and Zila Parishad vide order dated 23.12.2016 and 29.03.2017 by Panchatat

Development committee throught Gram Panchatat on priority basis of wards.

E. And also for any other relief or reliefs for which the petitioners are found entitled in the eye of law.”

2. Learned counsel representing the petitioners while referring to Article 243 of the Constitution of India and various provisions of the Bihar Panchayat Raj Act, 2006 has raised a grievance against memo no.4039 dated 19.04.2017 (Annexure-3 to the writ application) by which the Secretary, Bihar Panchayat Raj Department has restrained the Panchayat Samiti and Zila Parishad from utilizing the devolution fund allotted on 23.12.2016 as contained in Annexure-1 and vide letter no.18 dated 29.03.2017 as contained in Annexure-2 to the writ application in so far as it relates to the works being executed under Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna. According to Annexure-3 to the writ application in the light of the recommendations of the 5th State Finance Commission for the financial year 2016-17 separate funds have been provided to the Panchayat Samiti and Zila Parishad. According to this Annexure-3 (i) Mukhyamantri Gramin Payjal Nishchay and (ii) Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna are executed through Gram Panchayat and for this purpose the Gram Panchayats have been provided funds out of which 90% funds are to be spent on these two Yojnas. Annexure-3 further provides that in the light of the recommendations of the 5th State Finance Commission Panchayat Samiti and Zila Parishad would be eligible to spend money from Pratinidhayan fund in the given manner. It is further provided that if the Zila Parishad and the Panchayat Samiti take any decision to spend money received by them by virtue of the recommendations of the 5th State Finance Commission, on account of Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna, then the procedures laid down for execution of such Yojnas and the standards fixed for that such as – Yojna must be executed through gram panchayat by Ward Development Committees and the preferences to the wards will be in accordance with the criteria fixed for such preference under the Yojna by the Gram Panchayat, shall be adhered to.

3. Mr. Dinu Kumar, learned counsel representing the petitioners submits that devolution fund has been provided by the State government to the Panchayat Samiti and Zila Parishad and after receipt of the devolution fund it becomes a property of the Panchayat Samiti and Zila Parishad in terms of Bihar Panchayat Raj Act, 2006, therefore, works towards execution of the scheme of drinking water supply through pipes and street drainage sanitation cannot be diverted to the Panchayat with specific mode of execution by ward development committee through Panchayat and such exercise of power by the State Government is in violation of the provisions of the Bihar Panchayat Raj Act, 2002. It is alleged that the government does not want independence of duty being assigned to the Zila Parishad and the Panchayat Samiti and, therefore, government is always issuing such orders which are contrary to the provisions of the Act. It is pointed out that in LPA No. 1376/12 in the case of Kamlesh Kumar Vs. State of Bihar this Court has taken a view that the role of Zila Parishad and the Panchayat Samiti which are local self-government cannot be taken away in execution of the schemes of MANREGA. It is further pointed out that the power of government under Section 156(1) of the Act of 2006 in entrusting the work of implementing the scheme at the ward level through Ward Vikash Samiti has been decided in CWJC No.19591/2016 (Saran Zila Mukhiya Sangh Vs. State) vide order dated 17.05.2017 holding that the State has no power under Section 156(1) of the Act, 2006 to issue such direction. It is thus submitted that from Annexure-6 it will appear that the power of Zila Parishad under Section 73, 74, 77, 80 and 81 of the Act, 2006 have not been amended.

4. A counter affidavit has been filed on behalf of the respondents sworn by Additional Secretary, Panchayat Raj

Department, Government of Bihar. It is submitted that the petitioner has no *locus standi* in view of the provisions contained in Section 62 of the Act 2006 as amended till date. It is submitted that every Zila Parishad is a body corporate by the name of its Zila Parishad, having perpetual succession and a common seal, the petitioner claims himself to be a 'Sangh' cannot be allowed to sue in the present matter. The Zila Parishad is itself competent to sue or to be sued. Thus, a serious challenge has been made to the maintainability of the present writ application at the instance of the present petitioners.

5. By filing further supplementary counter affidavits respondent no.2 has clarified the stand of the Department in the matter of allocation of funds to the Zila Parishad and Panchayat Samiti. It has been submitted that the allocation of fund made available to Panchayat Samiti and other tiers of the panchayat are in accordance with the formula recommended by the 5th State Finance Commission constituted under Article 243(1) of the Constitution of India read with Section 168 of the Bihar Panchayat Raj Act, 2006 as well as Section 71 of the Bihar Municipal Act, 2007 adopted by the State Government vide Notification No.12530 dated 13.12.2013. The allocation of funds has been made accordingly and no challenge may be made by the petitioners to the allocation of 30% of the funds to Zila Parishad. As regards the guidelines issued vide memo no.4039 dated 19.04.2017

(Annexure-3 to the writ application) is concerned, it has been stated that there has been doubts amongst certain Zila Parishad and the Panchayat Samiti on the manner of spending of funds allocated to them under the recommendation of the 5th State Finance Commission. The guidelines provides for Zila Parishad and the Panchayat Samiti to spend the fund on Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna. At the same time, it has been made clear that it is not compulsory for the Panchayat Samiti and the Zila Parishad to spend the fund on the Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna.

6. It is stated that recently one day workshop of chairpersons and members of certain Zila Parishad and the Chief Executive Officers-cum DDCs as well as Pramukhs and Block Development Officers-cum-Executive Officers of certain Panchayat Samiti was convened in the Panchayati Raj Department and based upon the issues raised therein a letter vide memo no.7796 dated 07.09.2017 has been issued stating that the construction of such rural roads and nail-gali can also be get done by the Zila Parishad and Panchayat Samiti out of the fund devolved upon them under the recommendation of the 5th State Finance Commission which are not covered by any of the other schemes, but at the same time, it has to be ensured that such proposed construction work(s) is/are not included or being carried out under two Yojnas by the particular Gram Panchayat. The clarification has been issued in order to ensure that there could not be any overlapping on construction of rural road or nail-gali scheme of the Zila Parisha/Panchayat Samiti vis-à-vis the scheme of the particular Gram Panchayat.

7. In this regard the concerned Zila Parishad and the Panchayat Samiti will have to get prior no objection certificate from the concerned Gram Panchayat before taking a scheme under the Mukhyamantri Gramin Payjal Nishchay and Mukhyamantri Gramin Gali-Nali Pakkikaran Nishchay Yojna, if they so desire to implement such schemes for that Gram Panchayat.

8. Having heard learned counsel for the petitioners and learned counsel representing the State, we find that the grievance raised by the petitioners has already been taken care of by subsequent clarification issued vide memo no.7796 dated 07.09.2017. The reasons and rationale provided in the second supplementary counter affidavit filed on behalf of the respondent no.2 are correct and a reasonable one which we agree to. The Zila Parishad and the Panchayat Samiti have been conferred with the powers to go for implementation of the two schemes mentioned hereinabove following the guidelines and the procedures prescribed therein so that there should not be any overlapping in the matter of implementation of the two schemes. Prior no objection certificate from the concerned Gram Panchayat before taking a scheme has been rightly provided therein as a safeguard.

9. In view of the above, nothing remains for interference with the impugned orders in the writ application. The writ application, is, thus, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2018
Transmission Date	N/A