

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15818 of 2018

On The Letter Dated 02.08.2018 of Mr. Sanjay Kumar of District Jamui

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. The Principal Secretary, Vigilance Department, Patna.
3. The Inspector General of Police, Vigilance Patna.
4. The Deputy Inspector General of Police, Vigilance Patna.
5. The Superintendent of Police cum Incharge Police Station, Vigilance P.S. Patna.
6. The Deputy Superintendent of Police-cum-Investigating Officer, Vigilance Department, Patna.
7. The Principal Secretary, Home, Govt. of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	
For the Respondent/s	:	Mr. Lalit Kishore, Advocate General Mr. Anjani Kumar, AAG-4 Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

7 06-08-2019 This Public Interest Litigation was registered on a letter petition with regard to an investigation to be carried out with regard to the renovation of a temple known as “Giddheshwar Mahadev”, Khaira. A First Information Report was registered in 2016 itself and the investigation was being carried out which in the present case had been entrusted to one Shiv Chandra Singh who is a retired Dy.S.P. and had been engaged on contract basis to carry out the said investigation in



terms of Bihar Vigilance Investigation Cadre Rules, 2012. After the letter petition had been registered, a counter affidavit had been called for. The Court also noticed that the investigation was being carried out by a retired police officer who was engaged on contract basis. Consequently, we had issued notice to the State Government to explain the same which stands recorded in our order dated 10th April, 2019, extracted hereinunder:

“A letter petition sent by the petitioner, who is present in person, was directed to be registered as a Public Interest Litigation under the orders of the Hon'ble Chief Justice, which stands recorded, and accordingly vide order dated 12th March, 2019 the case has been directed to be placed before this Bench.

The Public Interest Litigation was registered, but at the same time, no orders had been passed for filing of any affidavit, but it appears that the Vigilance Department after receipt of the communication from the learned counsel of the Vigilance Department has chosen to file an affidavit through Shri Akshay Kumar Mishra, who is stated to be the present Dy.S.P. Incharge of the investigation of the case in question. The said affidavit discloses a very peculiar fact in Paragraph 10 relating to the investigation of the case at the initial stage by



one Shiv Chandra Singh.

The affidavit states that the investigation was handed over to the present officer after expiry of the contract of the aforesaid earlier Investigating Officer.

We have not been able to comprehend as to in what manner was an investigation got conducted on contract basis in respect of a case registered by the Vigilance Department that was recorded as Vigilance P.S. Case No. 114 of 2016 against nine accused persons under Sections 420, 409, 406, 408, 467, 468, 471, 120B of the Indian Penal Code read with Section 13(2) and 13 (1)(d) of the Prevention of Corruption Act, 1988. The investigation being carried out by somebody on contract basis appears to be a process which does not find contemplation under the Code of Criminal Procedure, 1973. The Court would, therefore, like to peruse the original file of the Vigilance Department as well as the official communications together with the records of the investigation which may indicate as to in what manner was Shri Shiv Chandra Singh entrusted with the task of investigation and as to whether he was in the police service when this was got done through him.

The Court would also like assistance from the learned counsel for the Vigilance Department as well as the learned Advocate General as to under which provision of law



investigation of a Vigilance Case already registered in a Police Station can be directed to be carried out on contract basis. The law in this regard as well as the steps taken and the orders passed by such officers or by the State Government authorizing such investigation should also be brought to the notice of the Court.

To our mind the power of policing, which is the exclusive power of the State, is an absolute sovereign function and, therefore, the question is as to whether carrying out of an investigation which falls within the plenary powers of the State resulting in prosecution and then ultimately, on guilt having been established, punishment, can be a function delegated or outsourced on contract basis. This larger issue, therefore, calls for a consideration and also as to whether any shortage of hands can be substituted by engaging persons for carrying out investigation under the Code of Criminal Procedure on contract basis.

Learned counsel for the State Government Shri Prabhu Narayan Sharma, who is present in Court, shall inform the learned Advocate General about the passing of this order.

The State of Bihar impleaded as the first respondent shall be represented through the Chief Secretary, Government of Bihar. In addition thereto, the Principal Secretary, Home, Government of Bihar shall stand added as a party



respondent. Both these respondents shall file their affidavit in this regard keeping in view the contents hereinabove. The affidavit shall be filed by 18th of June, 2019.

The aforesaid information is necessary in order to understand the validity of the investigation process and the compliance of the provisions of law, particularly in relation to cases arising out of allegations of corruption.

As prayed by the learned counsel, list on 18th of June, 2019.”

2. This was followed by another order on 21st June, 2019, which is also extracted hereinunder:-

“When the matter was taken up yesterday, the Court was apprised of the Bihar Vigilance Investigation Cadre Rules, 2012 framed in exercise of the powers under Article 309 of the Constitution of India. The same defines the cadre and also indicates the posts, the qualifications, the mode of recruitment etc. including direct recruitment and promotion and also specifies the number of posts as per the categories referred to in Schedule-I.

The said Rules also provides for appointments by deputation of retired police officers from the Home Police Department/CBI on contract basis.

Before we proceed with the matter, let



the respondent-State file an appropriate affidavit disclosing the details as to what steps have been undertaken to fill up the posts that are defined in the cadre as per the said Rules together with details of any selection that may have been initiated or are pending and then also the need for such appointment on contract basis keeping in view the rule 9(b) which also limits the number of appointments.

The affidavit be filed within four weeks as prayed for by the learned Advocate General. A copy of the Rules (English Version) shall also be brought on record.

List on 22nd July, 2019.”

3. On 22nd July, 2019 an affidavit had been tendered but it was withdrawn with liberty to file fresh affidavit indicating the facts pertaining to the queries raised by this Court with regard to engagements being made on contract basis. A counter affidavit has been filed on 2nd August, 2019 delineating the following facts in Paragraph 6 of the said affidavit:

“6. That in compliance of directions made by the Hon’ble High Court, following facts are submitted for kind consideration:

(a). With regard to the rule-9(1)(a) of Bihar Vigilance Investigation Cadre Rules 2012, for Vigilance Investigation Bureau 24 (Twenty



Four) posts of Deputy Superintendent of Police will be filled by deputation, 08 (Eight) posts by direct recruitment and 01 (One) post by promotion i.e. total of 33 (Thirty Three) posts have been sanctioned for Vigilance Investigation Bureau.

(b). According to rule-9 (1)(b) of Bihar Vigilance Investigation Rule 2012, for Special Vigilance Unit, 07 (Seven) posts of Deputy Superintendent of Police will be filled by deputation basis/retired Dy. S.P. from Home (Police) Department Bihar/Retired Dy. S.P. from CBI and 03 (Three) posts will be filled by direct recruitment.

C. Hence total 11 (Eleven) posts of Dy. S.P. are to be filled by direct recruitment.”

4. The affidavit further goes on to explain that appointments have to be made as per the 2012 Rules and that 7 posts of Deputy Superintendent of Police can be filled up from amongst retired police personnel on contract basis.

5. Reference with regard to other appointments having been made has been indicated therein and further as to the proposed appointments which the respondents would undertake in future.

6. According to the respondents, at the moment there



are 10 Deputy Superintendent of Police working on contract basis, whereas this figure according to the Rules itself cannot exceed 7. There are therefore three appointments in excess on contract basis.

7. Having perused the said affidavit, we direct the respondent-State to fill up all the vacancies only in terms of the 2012 Rules and not otherwise. Appropriate steps shall be taken to streamline the entire cadre with appropriate appointments if not already made in terms of the 2012 Rules, as expeditiously as possible.

8. Resort to appointment on contract basis can only be taken if the work load cannot be distributed amongst those appointed on regular basis under the 2012 Rules. In the circumstances, it will be the obligation of the respondents to first fill up the posts on regular basis as envisaged therein under the 2012 Rules and it is only when there is some need or exigency that engagements would be made on contract basis subject to the rules referred to hereinabove.

9. So far as the present case is concerned, since the F.I.R. is of the year 2016, we direct that the investigation in the matter be concluded within three months and the police report be submitted in accordance with law immediately thereafter.



10. The matter whenever was heard earlier, we found that the petitioner was present in person, but today when the matter is called out, he is not present. Nonetheless, we have taken notice of the aforesaid facts, whereafter we have disposed of the matter as this Public Interest Litigation had been registered only on a letter petition. The presence of the petitioner, therefore, is not necessary.

11. The writ petition stands disposed of with the said directions.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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