

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.529 of 2019

In

Civil Writ Jurisdiction Case No.7988 of 2019

Kaushlendra Kumar Son of Sri Ramanand Singh R/o Village-Pali, P.O.-Gola
Balraji, P.S. Kauakol, District-Nawada

... .. Appellant

Versus

1. The State of Bihar through the Principal Secretary, R.W.D. Department,
Govt. of Bihar, Patna
2. The District Magistrate Sheikhpura
3. Randhir Kumar S/o Suresh Yadav R/o Village-Bhikhani, P.O. Asthawan, P.S.
Karanda, Town and District-Sheikhpura

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Rakesh Kumar Sharma
For the State	:	Mr. Mritunjay Kumar, A.C. to AAG-6
For Respondent No.3	:	Mr. Navin Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 28-11-2019

Heard learned counsel for the appellant, learned
counsel appearing for the respondent no.3 and learned counsel
appearing for the State.



2. The present intra-court appeal has been filed by the appellant challenging the order dated 16.04.2019 passed by the learned single Judge in CWJC No. 7988 of 2019 by which he has directed the respondent no.2, the District Magistrate-cum-Programmer Co-ordinator, Mahatma Gandhi National Rural Employment Guarantee (for short 'MGNREGA'), Sheikhpura to see that the award passed by the Ombudsman MGNREGA, Sheikhpura is implemented in letter and spirit within a period of 60 days.

3. Learned counsel appearing for the appellant submitted that the order impugned has been passed against the appellant by the learned single Judge without affording any opportunity of hearing to him. He contended that the respondent no.3, who had filed the writ petition, did not implead the appellant as a party in the writ petition. The respondent no.3 is not even a person in whose favour the award was passed. He had no locus to have approached this Court in writ jurisdiction for implementation of the award passed by the Ombudsman. He contended that the learned single Judge did not appreciate the aforesaid aspects of the matter and passed the impugned order on the very first day on which the application was taken up without asking for any counter



affidavit from the State and without ensuring the impleadment of the appellant as a respondent.

4. Learned counsel appearing for the State has supported the contentions advanced on behalf of the appellant. He contended that even the State was not afforded any opportunity of hearing and was not even asked to file its counter affidavit.

5. Per contra, learned counsel appearing for the respondent no.3 submitted that the State was served with a copy of the brief in advance. In case, the State did not choose to appear before the Court, it cannot have any grievance in the matter. He has further contended that the respondent no.3 is a resident of the locality and is a public spirited citizen. He is deeply interested in the implementation of the award in question.

6. We have heard learned counsel for the parties and carefully perused the record.

7. The undisputed facts of the case are that one Anandi Prasad Singh of village Kapasi, Block Chewara in the district of Sheikhpura had filed Complaint Petition No. 23 of 2017-18 before the court of Ombudsman MGNREGA, Sheikhpura regarding non-performance of duty and public work against the Programme Officer MGNREGA, Sheikhpura. The learned Ombudsman inquired into the complaint and passed the award on 16.01.2019



against the appellant giving various directions including deposit of Rs.16,000/-, failing which he will have to pay fine at the rate of Rs.500/- per day.

8. Since the award passed by the learned Ombudsman was not complied with by the appellant, the respondent no.3 filed a writ petition before this Court vide CWJC No. 7988 of 2019 which was taken up by the learned single Judge for the first time on 16.04.2019 and after hearing the writ petitioner, learned single Judge directed the District Magistrate-cum-Programme Coordinator MGNREGA, Sheikhpura to see that the award passed by the learned Ombudsman MGNREGA, Sheikhpura is implemented in letter and spirit within a period of 60 days from the date of receipt/production of a copy of the order. The said order dated 16.04.2019 is under challenge in the present proceeding.

9. We have also seen the record of the writ petition filed by the appellant vide CWJC No. 11677 of 2019 against the award in question dated 16.01.2019 passed by the learned Ombudsman MGNREGA, Sheikhpura in Complaint Case No. 23 of 2017-18. Several questions of law including the authority under which the learned Ombudsman has passed the award has been raised in the said writ petition, which is still pending adjudication before this Court.



10. We do find substance in the submission of the learned counsel for the appellant that the respondent no.3 had no locus standi to approach this Court for implementation of the award passed by the learned Ombudsman. He being not the original complainant had not filed the writ petition in public interest. In absence of the award having been passed in his favour, he could not have approached this Court in his individual capacity for implementation of the same.

11. We also find that the appellant is the person against whom the award has been passed, but the respondent no.3 did not implead him as a party in the writ petition. Furthermore, the writ petition has been disposed of by the learned single Judge on the very first date of hearing without ensuring impleadment of the appellant as one of the respondents and without giving him any opportunity of hearing.

12. Keeping in mind, the discussions made above, the order impugned passed by the learned single Judge cannot be sustained.

13. Accordingly, the impugned order dated 16.04.2019 passed by the learned single Judge in CWJC No. 7988 of 2019 is set aside. Consequently, CWJC No. 7988 of 2019 preferred by the respondent no.3 is dismissed.



14. The appeal stands allowed.
15. Let the record of CWJC No. 16677 of 2019 be sent
back to the registry for being placed before the appropriate Bench.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

Pradeep/-

AFR/NAFR	NAFR
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