

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19035 of 2018

=====

Devesh Kumar Pradhan Son of Late Jagadish Pradhan, resident of Village+
P.O.- Miranpur, P.S.-Mohammadabad, District- Ghazipur Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The District Magistrate-cum- District Programme Co-ordinator MGNREGS, East Champaran, Motihari.
3. The Deputy Development Commissioner, East Champaran, Motihari.
4. The Certificate Officer, East Champaran, Motihari.
5. The Programme Officer, MGNREGS, Block- Chhauradano, District- East Champaran.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Bibhakar Tiwary, Advocate
For the Respondent/s : Mr.Vijay Kumar Verma, AC to GA-2

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 01-04-2019 Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner in the present case has moved this Court for
the following reliefs :-

“i) To issue an appropriate writ preferably in
the nature of certiorari for setting aside the
order bearing memo no. 206, dated
19.1.2018 issued under the signature of
District Magistrate-cum-District Programme
Co-ordinator (MGNREGS), East
Champaran, Motihari whereby and
whereunder sum of Rs. 99,600/- (Rs. Ninety
Nine Thousand Six Hundred Only) has been



ordered to be recovered from the petitioner.

ii) To issue an appropriate writ preferably in the nature of certiorari for setting aside letter no. 13, dated 20.1.2018 issued by the Programme Officer, Chhauradano, East Champaran by which the petitioner has been directed to deposit sum of Rs. 99,600/- (Rs. Ninety Nine thousand Six hundred only).

iii) To issue an appropriate writ preferably in the nature of certiorari for setting aside the certificates case no. 37/Defalcation/17-18 initiated against the petitioner for recovery of the aforementioned sum of Rs. 99,600/- (Rs. Ninety nine thousand six hundred only), and

iv) To grant any other relief for which the petitioner may be found entitled to in the facts and circumstances of the case.”

Learned counsel for the petitioner submits that this petitioner was appointed as Panchayat Technical Assistant on Contract basis. He had submitted his joining in the office of Deputy Development Commissioner, East Champaran, Motihari on 26.05.2008. It was an appointment for two years on a fixed salary of Rs. 9000/-. During his posting as Panchayat Technical Assistant in Gram Panchayat Raj Pakariya, he was directed by the Programme Officer, Chhauradano to conduct inquiry with regard to saplings planted and hand pumps installed under plantation scheme and to submit a report.



The petitioner, accordingly, conducted the inspection and submitted a report as contained in Annexure-2 to the writ application. In his report he had specifically submitted that many plants had dried up due to improper care and many plants have been damaged by J.C.B. Machine. The report submitted by the petitioner remained pending for years together. All of a sudden respondent authorities came to know that a complaint bearing Complaint No. 01/Lok (Panchayat) 11/15 was filed before the Hon'ble Lokayukta, Bihar with regard to irregularities committed in execution of plantation scheme. Immediately, thereafter, the District Magistrate, East Champaran, Motihari directed the Deputy Collector, Land Reforms, Raxaul to conduct an inquiry. The Deputy Collector submitted a report to the effect that 80% of the plants planted under MGNREGS Scheme No. 1 to 50/2011-12 were found dried in which a sum of Rs. 4,98,000/- was spent.

Learned counsel for the petitioner submits that in the inquiry report which is available at Annexure-E to the counter affidavit filed on behalf of respondent nos. 2 to 5 there is no whisper of allegation against this petitioner and it is clearly provided therein that in want of availability of funds, 80% of plant dried up because the necessary maintenance works were



not taken up. It is also pointed out by learned counsel for the petitioner that at this stage after five years of the submission of report by this petitioner in the inquiry conducted by Deputy Collector, Land Reforms, Raxaul the petitioner had no opportunity to participate as no show cause was issued to him but subsequently vide Annexure-4 to the writ application the District Magistrate, East Champaran, Motihari called upon the petitioner along with others to show cause as to why 20% of the amount spent on the plantation under these schemes will not recovered from him.

In the show cause notice, it is submitted, the District Magistrate did not mention the material fact, which had transpired in the inquiry report saying that because of lack of funds and non-availability of the same the plants had not been maintained and those have been dried up. Still the petitioner submitted his reply vide Annexure- '5' to the writ application in which he had categorically stated that as per his duties, he had entered the vouchers in the measurement book at the relevant time on the direction of the then Programme Officer. He further submitted that in the report submitted by Deputy Collector, Land Reforms it is clearly provided that the plants had dried up because the necessary funds were not made available to



maintain them.

Learned counsel submits that as it appears that issuance of Annexure- '4' was only empty formality inasmuch as the District Magistrate-cum-District Programme Co-ordinator, (MGNREGA), East Champaran, Motihari has, while passing the impugned order as contained in Memo No. 206 dated 19.01.2018 (Annexure-6 to the writ application), imposed 20% of the amount as the amount recoverable from the petitioner without giving any consideration to the reply of the petitioner as contained in Annexure- '5' to the writ application.

Learned counsel submits that apparently the District Magistrate had in order to save his skin during the consideration of the matter before the Hon'ble Lokayukta came out with this impugned order and shifted the responsibility upon various persons including the present petitioner without any basis thereof.

Learned counsel for the State though initially attempted to defend the action of the respondent but in course of hearing he has taken a fair stand to the extent that the impugned order at least no where mentions what had transpired in the inquiry report as the reason for drying up of the 80% of the plants and further that the impugned order no where takes into



consideration the reply of the petitioner as contained in Annexure- '5'.

Having heard learned counsel for the petitioner and learned counsel for the State as also after going through the aforementioned documents which are available on the record, this Court finds that by passing the impugned order, as contained in Annexure-6, the District Magistrate who was also the District Programme Co-ordinator, (MGNREGA), East Champaran, Motihari has only done an empty formality. This Court finds that right from the stage of issuance of show cause notice he had not mentioned the true and correct fact as appearing in the inquiry report of Deputy Collector, Land Reforms, Ruxaul that 80% of plants had dried up because of non-availability of the funds for maintaining them. That was a relevant fact which had a bearing upon the whole case. The fact that the petitioner has submitted a reply as contained in Annexure- '5' which has not at all been considered by the District Magistrate in the impugned order would also demonstrate that right from the beginning he was moving with a predetermined mind to come out with a plea that he had done something towards fixing of responsibilities and imposition of liabilities upon the persons who had at one point of time been



involved in any capacity in the plantation scheme. By not considering the reply of the petitioner, the District Magistrate has violated the principles of natural justice. The impugned order is apparently bad in law and is liable to be quashed. It is, accordingly, quashed.

As a result of quashing of Annexure- '6', the amount if any recovered from the petitioner shall be refunded to him within a period of 60 days from the receipt/production of the copy of this order. In consequence thereof the Certificate Case No. 37/Defalcation/17-18 in relation to present petitioner is quashed.

This writ application is allowed.

(Rajeev Ranjan Prasad, J)

avin/-ved-

U			
---	--	--	--

