

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.380 of 2021
In
Civil Writ Jurisdiction Case No.23516 of 2019

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Hirawati Devi, W/o-Yamuna Paswan, Resident of Village-Lohdan, Gram Panchayat Lohdan, P.S.-Chand, District-Kaimur at Bhabua.

... .. Appellant

Versus

1. The State of Bihar through Principal Secretary, Gram Panchayat Raj Department, Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.
3. The District Panchayat Raj Officer, Kaimur at Bhabua.
4. The Block Development Officer, Chand, District-Kaimur at Bhabua.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr.Rajeev Kumar Singh, Advocate
For the State	:	Mr. Dharendra Kumar, AC to AAG-6
For the Commission	:	Mr. Amit Shrivastava, Sr. Advocate
		Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
and
HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-10-2021

Learned counsel for the petitioner has filed an undertaking to remove all defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all the defects pointed out by the Stamp Reporter be removed within one month hereof.

2. In the instant appeal, the appellant has assailed the judgment dated 08.03.2021 passed in CWJC No. 23516 of 2019.



3. The appellant was elected as a member of Gram Panchayat Raj Lohdan, Block- Chand, District- Kaimur at Bhabhua for a period of five years from the year 2016 to 2021. She was elected as Mukhiya. Gram Panchayat was allotted funds in respect of implementation of the scheme called “Saat Nischay”. The funds were to be used for construction of concrete street and drainage system as well as for management of drinking water. The funds were transferred to the aforesaid Panchayat and it was alleged to have been defalcated by the appellant to the extent of Rs. 33.97 lakhs. The concerned authority after due notice of the alleged defalcated sum of Rs. 33.97 lakhs issued a show cause notice to the appellant vide memo dated 10.10.2018 by the District Panchayat Raj Officer, Kaimur. On receipt of the appellant’s reply, the concerned officer proceeded to invoke Section 18 (5) of the Bihar Panchayat Raj Act, 2006 (for short “Act 2006”). The matter was concluded by passing the impugned order dated 20.10.2019/01.11.2019 vide Memo No. 7085 dated 05.11.2019, by which the appellant was removed from the post of Mukhiya of Gram Panchayat Raj, Lahdan, Block – Chand, District- Kaimur at Bhabhua for the left over period on the charge of alleged defalcation of public funds.



4. Feeling aggrieved and dissatisfied with the order dated 28.10.2019/01.11.2019, the appellant preferred C.W.J.C. No. 23516 of 2019. The learned Single Judge after taking note of the factual aspects of the matter and prima facie defalcation, proceeded to dismiss the appellant's writ petition on 08.03.2021. Hence the present L.P.A.

5. Learned counsel for the appellant vehemently contended that the Senior Treasury Officer, who has been appointed by the District Magistrate for conducting the inquiry, was not a competent person for the said purpose. Reference has been invited to Section 2 (ag) of 'Act 2006', according to which, if any officer other than the Sub-divisional Magistrate is to be appointed as an Enquiry Officer, the State Government must authorize the appointee accordingly to discharge all or any of the functions of the Sub-divisional Magistrate. On this score itself, the impugned order before the learned Single Judge and consequent order of the learned Single Judge dated 08.03.2021 are liable to be set aside and present appeal be allowed.

6. *Per contra*, learned counsel for the State submits that today he has filed a supplementary counter affidavit on behalf of respondent Nos. 2 to 4 pursuant to the earlier order of this Court dated 07.10.2021.



7. Learned counsel for the State submits that this legal issue was not raised before the learned Single Judge in C.W.J.C. No. 23516 of 2019.

8. The learned counsel for the State then tried to impress this Court in pointing out Sub-rule 4 of Rule 4 of the Bihar Panchayat (Inspection of Officers and Enquiry into Affairs, Supervision & Guidelines) Rules, 2014 (for short “2014 Rules”) to overcome Section 2 (ag) of ‘Act 2006’.

9. Learned counsel for the State Election Commission submitted that pendency of this L.P.A. read with interim order not to publish the result is coming in the way of announcing the result in respect of 2021 election. Therefore, State Election Commission be permitted to announce the election result.

10. Heard learned counsel for the respective parties.

11. Crux of the matter in the present appeal is whether Senior Treasury Officer is empowered to hold an enquiry or not and further proceedings dated 28.10.2019 is sustainable or not.

12. It is admitted fact that the appellant was elected as a Mukhiya of Gram Panchayat Raj Lohdan, Block-Chand, District-Kaimur at Bhabua for the year 2016-2021 and in the financial year 2016-17, funds were allocated to the aforesaid Gram Panchayat for the purpose of implementation of ‘Saat Nischay Scheme’ relating



to construction of concrete street and drainage system as well as for management of drinking water. It is alleged that she had misappropriated a sum of Rs. 33.97 lakhs which was earmarked for implementation of 'Saat Nischay Scheme'. After due notice to the appellant, further proceedings have been undertaken by the Government in removing her from the post of Mukhiya to the aforesaid Gram Panchayat on 28.10.2019. Appellant had remitted alleged amount along with interest on the score that her remaining tenure would not be continued.

13. It is undisputed that the appellant has not raised the legal issue relating to the appointment of Senior Treasury Officer as an Enquiry Officer in respect of alleged defalcated amount of Rs. 33.97 lakhs of the Gram Panchayat. Appellant's counsel has pointed out that before appointment of Senior Treasury Officer as Enquiry Officer by the District Magistrate, the State Government is required to invoke Section 2 (ag) of the Act 2006. Section 2 (ag) reads as under :-

"2(ag) "Sub-divisional Magistrate" means a Sub-divisional Magistrate of a Sub-division so appointed by the State Government and includes any other officer, who may be especially authorised by the State Government to discharge all or any of the functions of the Sub-divisional Magistrate under this Act".



14. On perusal of the aforesaid provision, it is crystal clear that before appointing the Senior Treasury Officer, in the present case as inquiry officer, an order or notification by the State Government in appointing Senior Treasury Officer as Enquiry Officer is necessary. No such notification or authorization has been brought to out notice by learned counsel for the State. Thus, appointing the Senior Treasury Officer as an Enquiry Officer by the District Magistrate is not in consonance with the aforesaid provision and on this sole ground, the appellant is entitled to relief sought in the writ petition. We are of the view that this issue goes to the very root of the jurisdiction exercised by the authority and may be raised even at the present stage.

15. Learned counsel for the State submitted that Rule 4 (4) of “2014 Rules” authorises the District Magistrate to appoint an officer not below the rank of Sub-divisional Magistrate. The aforesaid provision reads as under:-

(4) The District Magistrate may order to hold inquiry by any officer of the district, whom he thinks fit, but not below the rank of Sub-divisional Magistrate. The District Magistrate of the district of Divisional Headquarters may, with the consent of the Divisional Commissioner, get any affair of Gram Panchayats inquired by the Deputy Director (Panchayat) posted at the division level or by any other officer”.



16. On perusal of the aforesaid provision, it is crystal clear that the District Magistrate is empowered to appoint an officer for the purpose of holding an enquiry, that is, Sub-divisional Magistrate or an equivalent cadre officer. In the present case, the Senior Treasury Officer has not been shown to be of the minimum rank of a Sub-divisional Magistrate so as to invoke Rule 4(4) of the “2014 Rules”. Even assuming Sub-rule 4 of Rule 4 of ‘2014 Rules’ is attracted, the District Magistrate has not complied the aforesaid provision of Section 2 (ag) of the “Act 2006” and no material information furnished in support of supplementary affidavit filed during the course of the day. Consequently, the State has not made out a case in apprising this Court that Senior Treasury Officer is competent to conduct enquiry even in absence of government notification or authorization pursuant to Section 2 (ag) of the “Act 2006”.

17. The Apex Court in the case of ***U.P Milk Union & Dairy Federation Centralised Services vs. Jagpal Singh*** reported in ***(2021) 5 SCC 259*** in para 32 has held as under :-

“32. The learned Single Bench found that the Chairman of the Administrative Committee and that the Milk Commissioner are one and the same person, which vitiates the order of punishment passed. We do



not find any merit in the said finding. Sir William Wade in his Administrative Law stated:

“But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity; for otherwise there is no means of deciding and the machinery of justice or administration will break down.”

It was further stated:

“In administrative cases the same exigency may arise. Where the statute empowers a particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognised type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament.”

18. The Apex Court in the case of ***Dhananjaya Reddy vs. State of Karnataka*** reported in ***AIR 2001 SC 1512*** has held as under :-

“It is settled principles of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all”.



19. The Apex Court in the case of ***State of Uttar Pradesh vs. Singhara Singh reported in AIR 1964 SC 358*** has held as under :-

“A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164”.

20. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.

The aforesaid principle is aptly applicable to the present case.

21. The learned counsel for the State Election Commission submitted that pendency of this litigation and interim order would come in the way of announcing the result of the election. In view of the interim order, however, disposal of this matter would come in the way of announcing the result. Since we are allowing the present LPA, there would not be any hurdle to announce the election result. Moreover, interim order or direction, if any, would merge with the final order. In other words, interim order/direction ceased to be in force.

22. Accordingly, the order dated 28.10.2019/01.11.2019 is set aside. Further judgment dated 08.03.2021 passed in C.W.J.C. No. 23516 of 2021 is also set aside.



23. In the result, this appeal is allowed reserving liberty to the State to proceed in accordance with law. This judgment would not come in the way of the Election Commission in announcing the result.

24. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

(P. B. Bajanthri, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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