

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.150 of 2021

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Lalan Prasad Son of Shiv Narayan Prasad Resident of Village-Jogiya, P.S.-
Barun, District-Aurangabad

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Additional Collector-Cum-Deputy Development Commissioner, Aurangabad.
4. The Block Development Officer, Barun, Aurangabad.
5. The District Panchayat Raj Officer, Aurangabad,
6. The Block Panchayat Raj Officer In-charge, Barun
7. The Mukhiya, Ex-officio Chairman-Cum-Member, Gram Panchayat Jankop, Block Barun, District-Aurangabad
8. The Gram Panchayat Secretary, Gram Panchayat Jankop, Block Barun, District-Aurangabad.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Yogesh Chandra Verma, Senior Advocate
		Ms. Leelawati Kumari, Advocate
For the Respondents	:	Mr. Satyavrat, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 20-01-2022

This application has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

2. The petitioner was Mukhiya of Gram Panchayat Jankop in the district of Aurangabad, in Barun Block. It is his case that he had withdrawn some amount as an advance for completion



of certain schemes for under 14th Finance Commission in the said Panchayat. It is the petitioner's own case that he had withdrawn the amount during the financial year 2016 for completion of the said projects, fifteen in number, which ended in March 2016. It is his further case that after having withdrawn the said advance, he completed the said fifteen projects with the estimated cost of Rs. 66,05,280/-. Further, he had completed the work and the cost of the project was reduced and the final cost to be paid was fixed at 52,09,775/-. The petitioner further asserts that over and above the advance, which he had taken, he had spent the rest of the amount from his own resources for completion of the said schemes, but has not been paid legally admissible dues to the tune of Rs. 34,33,785/-.

3. There is no averment in the writ petition as to when the works were completed by him. He was admittedly not a Mukhiya after the Panchayat elections in 2016. In the aforesaid background, the petitioner is seeking a direction to the authorities for payment of Rs. 34,33,785/- for the work executed by him in the year 2015-16. It further appears from the writ petition that the first representation, which he made for payment of the amount was on 19.11.2018, a copy of which has been brought on record by way of annexure. On the same day, the Panchayat Secretary also



said to have filed a representation before the Block Development Officer. He also claimed payment of the remaining amount spent for the completion of the aforesaid work. There is no pleading in the writ petition as to why, for the first time, the petitioner made his representation on 19.11.2018, when the said schemes were completed before March 2016.

4. On reading of the representation filed by the Panchayat Secretary dated 19.11.2018, a copy which has been brought on record by way of Annexure-P/2, it appears that according to him the payments against projects made for the completion of work and wages to the labourers were not paid for completion of the projects in question. It further transpires that the petitioner thereafter approached the local Member of Parliament on 19.08.2019 raising his grievance that the petitioner was not being paid the amount spent by him as the ex-Mukhiya of the Gram Panchayat for completion of the works in question.

5. A counter affidavit has been filed sworn by the Block Development Officer of the Block, wherein it has been stated that adequate fund was not available in the account of Gram Panchayat, Jankop, in the year 2015-16. The petitioner was though aware of the non-availability of sufficient funds for the said financial year, he withdrew advances from the account of the



Panchayat, when the next Panchayat elections, 2016, were soon due. It has further been stated that without allotment of the fund and without obtaining necessary permission from the concerned authority of the Panchayat Raj Department, the petitioner is claiming completion of all the schemes in question in his self-interest. It has further been stated that withdrawal of advances by the petitioner, when the Panchayat elections were due was against the Code of Conduct.

6. Mr. Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the petitioner has vehemently argued that even the authorities have found the schemes to have been completed by the petitioner. He has relied on a letter dated 27.06.2020 written by the Block Development Officer to the District Panchayati Raj Officer, Aurangabad, wherein he is said to have communicated that the petitioner's demand for payment was genuine. He has argued that since the petitioner has, admittedly, completed the schemes of the State Government, the State Government must pay to the petitioner, the amount, admittedly, due to him based on the measurement book reflecting the work done. He has placed reliance on a Single Bench decision of this Court rendered on 19.12.2006 in C.W.J.C. No. 13193 of 2005



(M/s Bhagwati Prasad and Company vs. The State of Bihar and Others).

7. When the matter was being argued by Mr. Verma, learned Senior Counsel for the petitioner, the Court repeatedly pointed out that in the background of nature of the dispute and pleadings on record, the relief claimed cannot be entertained by this Court in a proceeding under Article 226 of the Constitution of India. Mr. Verma would not relent and argue the petitioner's case at length, relying on the aforesaid decision of this Court. He has submitted that the petitioner should not be allowed to suffer for the laches on the part of the respondents, who failed to make sufficient funds available for the completion of the projects in question.

8. It is apt to mention here that this Court had, during the course of hearing, also observed that the manner in which the claim is being raised by the petitioner in the writ petition, may be an attempt to *preempt* any criminal action against him. Mr. Verma, however, asserted bonafide of the petitioner in raising the claim in the writ petition.

9. Today, Mr. Verma, has informed this Court that certain criminal cases are pending against the petitioner.

10. After having perused the rival pleadings on record and considered the submissions advanced on behalf of the



petitioner, we are of the considered view that this writ application lacks bonafide. The conduct of the petitioner raising his claim more than two and half years after he had withdrawn the advances in 2016 by making the representation on 19.11.2018, raises reasonable suspicion over the petitioner's bonafide. The petitioner filed this writ application on 03.01.2021, though his claim, according to him, relates to the financial year 2015-16.

11. Further, the respondents have not admitted the petitioner's claim, rather they have objected to the conduct of the petitioner in withdrawing an advance amount in 2016 from the account of Panchayat despite knowing it well that he would not be continuing as Mukhiya soon thereafter.

12. The claim of the petitioner, therefore, cannot be said to be admitted.

13. In such a view of the matter, we do not find any merit in this application. This application is accordingly dismissed.

14. Further, considering the facts and circumstances and nature of materials available on record, we consider it apt to impose a cost upon the petitioner, which is quantified at Rs.20,000/- (Twenty thousand), to be deposited in the account of Bihar State Legal Services Authority within one month from today.



15. In addition, in facts and circumstances of the case, it is considered appropriate to direct the Principal Secretary, Panchayati Raj Department, Government of Bihar, to cause an enquiry by himself or any official authorized by him for the said purpose into the aspect of the utilization of the amount, which the petitioner had withdrawn and lodge appropriate proceeding based on the findings arrived at the said enquiry, if so warranted. The Principal Secretary is further directed to ensure that the enquiry is concluded within a period of two months from the date of receipt/production of a copy of this order. It goes without saying that the petitioner shall be given an opportunity by the Principal Secretary or any other official authorized by him during the enquiry, to present his case.

16. Let this order be communicated to the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna, forthwith.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.02.2022.
Transmission Date	N/A



