

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9754 of 2022

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Shyam Bihari Mishra Son of Late Haridwar Mishra, Resident of Village-
Keshopur, P.S.- Simri, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Panchayati Raj, New Secretariat, Patna.
2. District Magistrate, Buxar.
3. Block Development Officer, Rajpur, District- Buxar.
4. Block Development Officer, Brahampur, District- Buxar.
5. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pratap Sharma, Advocate
For the Respondent/s	:	Mr.Kumar Alok (SC 7)
		Mr.Rakesh Kumar, AC to SC 7
For the AG	:	Mr.Chaitanya Swaroop, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-07-2023

Heard Mr. Pratap Sharma, learned counsel appearing on behalf of the petitioner,; Mr. Chaitanya Swaroop, learned counsel appearing for the respondents and Mr. Kumar Alok, learned SC 7 for the State.

2. Mr. Birendra Kumar Prabhakar, Ex-B.D.O., Brahampur (Buxar) is present in the Court and he seeks permission to withdraw the show cause filed on his behalf duly sworn on 19.07.2023 and filed on 20.07.2023. The same is permitted to be withdrawn.



3. Mr. Ashish Kumar Mishra, present B.D.O., Brahmipur (Buxar) is present in the Court, who had misled this Court by not bringing any document on record by way of counter affidavit or supplementary counter affidavit till date. A certificate proceeding was initiated against the petitioner long back by the present B.D.O. in the year, 2020 (just after his joining) and the reason to initiate the certificate proceeding was loss of public money caused by the petitioner amounting to Rs.6,12,000/- for the purpose of doing certain work. The said work had been certified by the Junior Engineer, Rural Development Department. The B.D.O. who is present in the Court has orally informed that the work has already been performed by the petitioner after his retirement. There was no occasion for lodging of the certificate proceeding against the petitioner on the basis of any alleged loss without quantifying and comparing with the M.B. book.

4. This Court finds that the present B.D.O. can not take stand that the work has been completed and money has not been misappropriated and the Junior Engineer has certified that the work has already been completed. As such the present B.D.O. is responsible for lodging of false case against the petitioner.

5. For the reason best known to the present B.D.O, he misled the District Magistrate, who directed him mechanically to



file a certificate case against the petitioner for realization of the above misappropriated amount.

6. The petitioner is aggrieved by the certificate proceeding also.

7. This Court finds that the District Magistrate in most mechanical manner had directed to initiate certificate proceeding against the petitioner without any cogent reason and quantifying the loss to be only realized from the petitioner by filing a certificate case, which is pending before the Certificate Officer. The petitioner under coercion deposited the alleged misappropriated amount in the Treasury. Such misappropriation can not be done only by the petitioner when the Junior Engineer and the present B.D.O. had found that the work has already been completed and the petitioner has readily deposited the entire amount.

8. Having considered the facts of the case, this Court directs the District Magistrate to call upon the records of the case and clarify as to whether certain work had been granted by the then B.D.O, who is present in the Court, during whose period the entire work was allotted to the petitioner, who was posted as Panchayat Secretary, Yogiyan. The Collector must also take appropriate action against the present B.D.O. who has misled not



only this Court but the District Magistrate also. The District Magistrate must also initiate proceeding against the present B.D.O. and the Junior Engineer taking into consideration as to why the Junior Engineer allowed the petitioner to complete the work even after his retirement and why the action was not taken against the petitioner in spite of the fact that in the year, 2014 itself the illegality detected and the FIR was lodged against the petitioner.

9. Petitioner at this stage seeks to avail appropriate remedy. However, the District Magistrate must not absolve him from the illegality, which he has committed in connivance with the then B.D.O. who was posted in the financial year, 2012-2013 and 2013-2014 and transferred on 19.05.2020 and the present B.D.O. who had joined on 19.07.2021 and has been active in the alleged illegality committed by the petitioner as well as the Junior Engineer, who had sought permission from the District Magistrate for filing certificate case against the petitioner.

10. This Court is aware that the government schemes are not being carried out in manner the same has been brought into effect by the Central Government and the public money are being plundered, as reflected in the present case.

11. The District Magistrate having not taken the issue seriously and in a mechanical manner directed to initiate the



certificate proceeding only against the petitioner just to save the illegal act committed by the Junior Engineer, the then B.D.O. and the present B.D.O. for the reasons best known to him and had proceeded with the certificate case against the petitioner. The record reveals that the entire work has been completed by the petitioner after his retirement in connivance with the government officials, who are also responsible for misappropriation.

12. The District Magistrate must take appropriate action in accordance with law against the government officials also to whom he finds responsible for swindling of the public money in the well organized manner.

13. With the above observation/direction, the present writ petition stands disposed of.

14. There will be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	NA
CAV DATE	NA
Uploading Date	28.07.2023
Transmission Date	NA

