

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13223 of 2022

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Kumar Ritik Son of Raghubansh Singh, Resident of Mohalla- New Kunj Co-operative Colony, Police Station- Bahadurpur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development of Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Sr. Advocate
Mr. Bibhuti Narayan, Advocate
For the Respondent-State: Mr. Subhash Prasad Singh, GA-3
Mr. Dilip Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 27-02-2023

The present writ petition has been filed seeking the following reliefs:-

"A) For quashing the order contained in Letter No. 2574 dated 22.07.2022 issued by Respondent No. 3 whereby and whereunder on the basis of ex-party enquiry and its report the petitioner has been asked for show- cause, in violation of constitutional right guaranteed 74th amendment of Indian Constitution and Bihar Municipal Act, 2007.

(B) For quashing the order



contained in Letter No. 2563 dated 31.05.2022 issued by Respondent No. 3 whereby and whereunder the petitioner has been imposed economic punishment of Rs. 5000.00 under Section 8 (i) of Bihar Public Grievance Redressal Right Act, 2015.

(C) For quashing the order contained in Letter No. 1807 dated 03.06.2022 issued by Respondent No. 3, whereby and wherunder direction has been issued to maintain status quo of pre- existing work allotment of employees of Nagar Parishad, Dehri.

(D) For giving a direction not to make interference in day-to-day functioning of Nagar Parishad by the local Administration without any direction and approval by the State Government."

2. The brief facts of the case are that while the petitioner was posted as Executive Officer, Nagar Parishad, Dehri, Dalmia Nagar, an enquiry was initiated by the District Magistrate, Rohtas at Sasaram, in pursuance whereof, a report was submitted under the joint signature of the Senior District Collector, Rohtas at Sasaram and the Sub-Divisional Officer, Dehri at Rohtas dated 16.07.2022, wherein it was recommended to call for a show-cause reply/clarification from the petitioner



and others with regard to the irregularities found during the course of award of tender, whereafter, the District Magistrate, Rohtas at Sasaram had issued a show-cause notice dated 22.07.2022 to the petitioner herein, reply whereof was submitted by the petitioner on 01.08.2022. It is the further case of the petitioner that subsequently, the District Magistrate, Rohtas at Sasaram vide letter dated 01.09.2022 has framed charges in Prapatra 'क' and has sent the charge-sheet to the department for taking appropriate departmental action against the petitioner herein.

3. The learned senior counsel for the petitioner has referred to the provisions contained under the Bihar Municipal Act, 2007, Sections 65 to 67 whereof are reproduced herein below:-

"65. Power of State government to call for the records etc.- The State Government may, at any time, require any municipal authority-

(a) to produce any record, correspondence, or other documents,

(b) to furnish any return, plan, estimate, statement, accounts, or , statistics, and

(c) to furnish or obtain any report and thereupon such municipal authority shall comply with such requirement.



66. Power of State government to depute officers to make inspection or examination and report.- The State Government may depute any of its officers to inspect or examine any department, office, service, work or property of the Municipality and to report thereon, and such officer may, for the purpose of such inspection or examination, exercise all the powers of the State Government under section 65:

Provided that such officer shall be not below the rank of -

(a) a Deputy Secretary to the State Government in the case of a Municipal Corporation, and municipal council of class "A" and "B",

(b) an Under Secretary to the State Government in the case of a Class 'C' Municipal Council or Nagar Panchayat, as the case may be.

67. Power of State Government to require municipal authorities to take action.- If, after considering the records required under section 65, or the report under section 66, or any information received by Government the State Government is of opinion that -

(a) any action taken by a municipal authority is unlawful or irregular or



any duty imposed on such authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner, or

(b) adequate financial provision has not been made for the performance of any duty under this Act, the State Government may, by order, annul such action, or require such municipal authority to regularize such unlawful or irregular action or perform such duty or restrain such authority from taking such unlawful or irregular action or direct such authority to make, to the satisfaction of the State Government or within such period as may be specified in the order, arrangement, or financial provision, as the case may be, for the proper performance of such duty:

Provided that the State Government shall, unless in its opinion the immediate execution of such order is necessary, before making an order under this section, give such municipal authority, in writing, an opportunity of showing cause, within such period as may be specified by the State Government, why such order should not be made."



4. The learned senior counsel has submitted that the power to make an enquiry/inspection is subject to its authorisation by the State Government and deputation of officers for the said purpose, however, in the present case, the District Magistrate, Rohtas at Sasaram without any authority has conducted an enquiry into the affairs of the Nagar Parishad, Dehri and has also framed charges in Praptra 'क' and has sent the chargesheet to the State Government for initiating a departmental proceeding against the petitioner herein which is contrary to the mandate of the provisions contained under Section 66 of the Bihar Municipal Act, 2007, nonetheless, it is simultaneously submitted that in case the State Government wishes to proceed ahead, it should first give an opportunity to the petitioner to explain his side of the story and after considering the materials available on record, it should come to a categorical finding as to whether initiation of departmental proceeding is required or not, as far as the petitioner is concerned.

5. *Per contra*, though the learned counsel for the respondent-State has vehemently opposed the reliefs sought for by the petitioner in the present case by submitting that gross irregularities have been found in the process of allotment of



tender and the petitioner is also *prima facie* responsible for the said irregularities, but he has not denied the fact that the District Magistrate, Rohtas at Sasaram was not authorized by the State Government to make inspection or conduct an enquiry, however, it is submitted that in case this Court directs, the petitioner would definitely be given an opportunity of hearing and after considering all the materials available on record, a conscious decision would be taken regarding initiation of departmental proceedings qua the petitioner herein.

6. Having regard to the facts and circumstances of the case and having considered the submissions made by the learned senior counsel for the petitioner as also those made by the learned counsel for the respondents, I deem it fit and appropriate to direct the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna, i.e. the respondent no.2 to grant an opportunity to the petitioner to put forthwith his defence and after considering the reply to be filed by the petitioner as also upon consideration of the report submitted by the District Magistrate, Rohtas at Sasaram, the respondent no.2 shall take an independent view of the matter, as to whether any departmental proceeding is required to be initiated against the petitioner herein or not.



7. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2023
Transmission Date	NA

