

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.40 of 2022

Arising Out of PS. Case No.-828 Year-2021 Thana- GOPALGANJ TOWN District- Gopalganj

=====

SAMEER KUMAR SINGH Son of Late Lalji Singh Resident of Flat No. 104, Block- B, Regency Pragya Pradeep, Nandanpuri, Khajpura, P.S. - Rajeev Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Additional Chief Secretary, Home (Special) Department, Govt. of Bihar, Patna.
4. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
5. The District Magistrate- Cum- District Election officer (Panchayat), Gopalganj.
6. The Superintendent of Police, Gopalganj.
7. The Establishment Deputy Collector- Cum- Nodal officer, Personnel Cell, Gopalganj.
8. The District Programme officer, Planning and Accounts, Gopalganj.
9. The Station House officer, Town Police Station, Gopalganj.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Adv. Mr. Rishi Raj Raman, Adv.
For the Respondent/s	:	Mr.Sheo Shankar Prasad, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 19-09-2023

1. The present writ application has been filed for quashing of First Information Report dated 13-11-2021 bearing Gopalganj Town PS Case No. 828 of 2021 registered under Section 130 (2) of the Bihar Panchayat Raj Act, 2006 [hereinafter referred to as the “Panchayat Act”].

2. The brief facts giving rise to the present writ appli-



cation is that the petitioner was posted on 08-07-2020 as Assistant Engineer, Rural Works Department, Work Sub-Division at Gopalganj. The petitioner was diagnosed with COVID- 19 in April, 2021 and after recovering from COVID -19 he resumed back to work from June, 2021, but his salary was not being released due to which he faced difficulty in getting proper treatment. On 24/07/2021 the petitioner informed the District Magistrate- cum- District Election Officer (Panchayat), Gopalganj not to depute him on any election duty or law and order duty as he was not having good health condition. Since the petitioner was not having good health condition and due to non payment of salary, he was unable to sustain himself accordingly, he left Gopalganj on 15/08/2021 after flag hoisting.

3. The District Magistrate- cum- District Election Officer (Panchayat), Gopalganj vide his letter no. 04 dated 04/09/2021 deputed the petitioner on law and order duty for the period 26-10-2021 to 01-11-2021 during the course of nomination for election of District Board Members. Having received the said order on his *Whatsapp* on 06-09-2021 the petitioner immediately sent a request letter through speed post to the District Magistrate cum District Election Officer (Panchayat), Gopalganj to dispense him with any election duty or law & order duty in-



cluding training programme in connection with Bihar Panchayat Election, 2021.

4. The District Magistrate cum District Election Officer, (Panchayat), Gopalganj vide letter no. 754 dated 25/10/2021 directed the Executive Engineer, Rural Works Department, Works Division, Gopalganj-1 to lodge an F.I.R. against the petitioner under Section 130(12) of the Panchayat Act. On direction of D.M., Gopalganj, Establishment Deputy Collector cum Nodal Officer, Personnel Cell, Gopalganj vide letter no. 78 dated 05-11-2021 directed the District Programme Officer (Planning and Accounts), Gopalganj to lodge an F.I.R. against the petitioner under Section 130 (12) of the Panchayat Act. In compliance of the said order, the D.P.O. (Planning and Accounts), Gopalganj vide letter no. 433 dated 12-11-2021 requested S.H.O., Town Police Station, Gopalganj to lodge an F.I.R. under Section 130(2) of the Panchayat Act and accordingly F.I.R. in question was lodged on 13-11-2021 under Section 130 (2) of the Panchayat Act against the petitioner.

5. As per the allegation made in the F.I.R. the petitioner failed to attend training programme held for election duty inasmuch as law & order duty was assigned to the petitioner for the Bihar Panchayat Election, 2021 as duty Magistrate.



6. Learned counsel for the petitioner argued that the Home Department vide its letter no. E/V-01-425/07-6211 dated 09/06/2008 [Annexure- 8] has issued guidelines to all the Principal Secretaries, Divisional Commissioners, District Magistrates, Inspector Generals and Superintendent of Police wherein it is stated that for administrative lapses, no F.I.R. should be lodged as proper remedy could be departmental proceeding. It has further been stated that at the time of lodging of the F.I.R. element of *mens rea* should be looked into.

7. He next submits that from bare reading of the F.I.R. no offence much less an offence under Section 130(2) of the Panchayat Act and / or Section 130(12) of the Panchayat Act is made out against the petitioner. Referring to the First Information Report learned counsel submits that the F.I.R. alleges that the petitioner failed to attend training programme held in relation to law and order duty as Flying Magistrate assigned to the petitioner during nomination of Bihar Panchayat Election, 2021. Section 130 (2) of the Panchayat Act is not attracted based upon the allegation made in the F.I.R. inasmuch as Section 130(2) deals with prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll. Likewise Section 130(12) of the Panchayat Act is also not attracted



based upon the allegation made in the F.I.R. Section 130 (12) of the Panchayat Act deals with punishment with regard to electoral offences by commission or omission only by the person(s) to whom this Section applies.

8. Persons to whom this Section applies as per Section 130(12)(3) are viz. District Election Officers (Panchayat), Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and any other person authorized to receive nomination or withdrawal of candidatures or the recording or counting of votes at an election but shall not include duty imposed otherwise than by or under this Act. The expression “official duty” for the purpose of this Section has fairly been expressed in the Section and shall not include duties imposed otherwise than by or under this Act.

9. Accordingly he submits that the petitioner was deputed on law and order duty as Magistrate of flying squad and he failed to report for training as such the duty assigned to the petitioner does not come under the expression “official duty” as defined under Section 130(12)(3) of the Panchayat Act. He lastly submits that at best departmental proceeding could have been initiated against the petitioner in view of Annexure - 8 in which guidelines have been issued by the Home Department



with regard to lodging of cases / F.I.R. upon Government officials.

10. Two counter affidavits have been filed on behalf of the State. One by the respondent no. 6 / Dy. S.P. (Headquarter), Gopalganj and 2nd by the respondent nos. 5, 7, 8 i.e. D.M. cum District Election Officer(Panchayat) Gopalganj, Establishment Deputy Collector, Nodal Officer, Personnel Cell, Gopalganj and D.P.O., Planning & Accounts, Gopalganj. Learned counsel for the respondents referring to the counter affidavits submits that F.I.R. has been lodged against the petitioner for his failure to report for training conducted for Panchayat election. A report was called for from the Inspector cum SHO, Gopalganj Town Police Station who informed that after registration of F.I.R. investigation was carried out with regard to the allegation against the petitioner-accused and the same has been found true. The Investigating Officer tried to serve notice under Section 41(A) Cr.P.C. upon the petitioner but in vain as no satisfactory information or reply has been given from the side of the petitioner. The investigation of the case is going on and is pending for its final conclusion. The respondents have denied the receipt of the letter sent by the petitioner to the District Magistrate cum District Election Officer for dispensing him with any election or



law & order duty including training in connection with Bihar Panchayat Election, 2021. It has further been submitted that due to clerical mistake F.I.R. has been lodged under Section 130 (2) of the Panchayat Act in place of Section 130 (12) (1A) of the Panchayat Act and if the F.I.R. is read in totality the same discloses an offence under Section 130 (12)(1A) of the Panchayat Act.

11. I have heard learned counsel for the parties and have perused the F.I.R. Upon reading of the First Information Report it appears that allegation has been made against the petitioner for his failure to report in the training programme held for the purpose of Bihar Panchayat Election, 2021 in which the petitioner was assigned the duty of Magistrate in flying squad during the course of nomination.

12. Section 130 (2) of the Panchayat Act under which the F.I.R. has been lodged deals with prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.

13. Section 130(2) of the Panchayat Act is quoted hereinbelow:

“130(2). Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.- (I) No person



shall-

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(II) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(III) In this section, the expression “election matter” means any matter intended or calculated to influence or affect the result of any election.”

14. Section 130(12) of the Panchayat Act is also quoted hereinbelow for ready reference:

“130(12). Breaches of official duty in connection with election.-(1) If any person to whom this Section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punish-



able with fine which may extend to five hundred rupees.

(1-A). An offence punishable under clause (1) shall be cognizable.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this Section applies are the District Election Officer (Panchayat), Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression “official duty” shall for the purposes of this Section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.”

15. Upon bare reading of the provisions of Section 130(2) of the Act and the allegation made in the F.I.R., I find force in the submission of learned counsel for the petitioner that allegation made in the F.I.R. does not disclose any offence under Section 130(2) of the Panchayat Act.

16. Insofar as Section 130 (12) of the Panchayat Act is concerned it appears that this particular Section deals with breaches of official duty in connection with election and says



that if any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees. (1-A) of the Section says an offence punishable under clause (1) shall be cognizable. The persons to whom this Section applies is also defined in Sub Section 3 of Section 130 (12) of the Panchayat Act which says that the persons to whom this Section applies are District Election Officers (Panchayat), Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and any other person appointed to perform any duty in connection with receipt of nominations or withdrawal of candidatures or the recording or counting of votes at an election. The Section further says that the expression “official duty” shall for the purpose of this Section be construed accordingly but shall not include duties imposed otherwise than by or under this Act.

17. I delved into the provisions of Section 130(12)(3) of the Panchayat Act. Sub clause 3 of Section 130 (12) of the Panchayat Act deals with the class of persons to whom this Section applies and uses the expression “any other person” appointed to perform “any duty in connection with the receipt of nominations”.



18. The Hon'ble Supreme Court in a case reported in (2005) 1 SCC 754 *K. Prabhakaran versus P. Jayarajan* in paragraph- 50 has taken note of the word "any" in Black's Law Dictionary (6th Edn.) in which the word "any" is defined as under:-

"Any.- Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity.

One or some (indefinitely).

'Any' does not necessarily mean only one person, but may have reference to more than one or to many.

Word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute.

It is often synonymous with 'either', 'every', or 'all'. Its generality may be restricted by the context; thus, the giving of a right to do some act 'at any time' is commonly construed as meaning within a reasonable time; and the words 'any other' following the enumeration of particular classes are to be read as 'other such like', and include only others of like kind or character."

19. In paragraph 51 of the said judgment the Hon'ble Supreme Court has further elaborated that the word "any" may have one of the several meanings, according to the context and the circumstances. It may mean "all"; "each"; "every"; "some"; or "one or many out of several". The word "any" may be used to



indicate the quantity such as “some”, “out of many”, “an infinite number”. It may also be used to indicate quality or nature of the noun which it qualifies as an adjective such as “all” or “every”.

20. Thus, it appears that the word “any” is a word of wide meaning and the use of it excludes limitation. The phrase “any other person”; “any duty” and “in connection with” are common phrases that can be found in many statutes.

21. The phrases can have different meanings depending on the context in which they are used. In general, “any other person” refers to any individual or entity other than those specifically mentioned in the statute. “Any duty” refers to any obligation or responsibility imposed by law. “In connection with” is a phrase that is used to link two or more things together, indicating that they are related in some way.

22. From perusal of the order dated 04-09-2021 contained in Memo No. 04 issued by District Election Officer-cum- District Magistrate, Gopalganj it appears that the petitioner was assigned duty for the period 26-10-2021 to 01-11-2021 as a Magistrate and was required to be present at nomination venue / site in order to ensure law and order during the course of nomination. The said order of the District Election Officer cum District Magistrate, Gopalganj is a part of the F.I.R.



23. It is true that Sub Clause 3 of Section 130 (12) of the Panchayat Act refers to the class of Officials to whom this Section applies. At the same time it also refers to “any other person” which means any individual other than those specifically mentioned in the statute.

24. The joint reading of the expression “any other person”; “any duty” and “in connection with the receipt of nominations” can be interpreted in the present context that all persons assigned duty in connection with nomination process in furtherance of smooth and peaceful nomination shall come under the purview of Section 130 (12)(3) of the Panchayat Act.

25. In view of the aforesaid discussions, I come to the conclusion that upon reading of the contents of the First Information Report *prima facie* offence under Section 130(12) of the Panchayat Act is made out against the petitioner.

26. In the result, this application is dismissed.

(Anil Kumar Sinha, J)

praful/-AFR.

AFR/NAFR	AFR
CAV DATE	22-08-2023
Uploading Date	19-09-2023
Transmission Date	NA

