

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.502 of 2019

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Rakesh Kumar, S/o Late Rajeshwar Singh Village- Tinari, P.S. Masaurhi,
Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj, Government of Bihar, Patna.
2. The Lokayukta, Bihar, through under Secretary, Bihar, Kantiya Marg, Patna
3. The District Magistrate, Patna
4. The Deputy Development Officer-cum-Chief Executive Officer, Zila Parishad, Patna
5. The Sub-Divisional Officer, Masaurhi, Patna
6. The Executive Magistrate-cum-Certificate Officer, Masaurhi, Distt.-Patna
7. The Block Development Officer, Masaurhi Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma with Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-10-2023

Heard Mr. Banwari Sharma, learned counsel, duly assisted by Mr. Pramod Kumar, learned counsel for the petitioner and Mr. Kumar Alok, learned SC-7, for the State.

2. The petitioner, who was elected Mukhiya of Gram Panchayat Raj, Tineri within the district of Patna from 2006 to 2016 filed the present writ petition seeking quashing of the notice, issued under the signature of District Magistrate, Patna, as contained in Memo No. 1-14/12 139 dated 20.10.2018 (Annexure-9) directing the petitioner to ensure his presence



before the learned Lokayukta, Bihar in connection with a proceeding, arising out of Case No. 5/Lok (Panchayat) 194/11 (titled as Shri Dharmendra Kumar Vs. District Magistrate, Patna) and further for quashing of the entire proceeding pending before the learned Lokayukta. The petitioner further assailed the order dated 29.11.2018 passed by the learned Lokayukta in the aforementioned case by filing an interlocutory application, bearing I.A. No. 88 of 2019 whereby apart from certain aspersion made against the petitioner direction has been given to deposit Rs.7,15,260/- in terms of the alleged undertaking given by the petitioner pursuant to the direction of the learned Lokayukta, failing which it has further been directed to initiate criminal as well as recovery case against the petitioner.

3. The issue involved in the present writ petition is only confined to the jurisdiction/power of the learned Lokayukta, Bihar, qua the legality of the initiation of the proceeding, arising out of Case No. 5/Lok (Panchayat) 194/11 and the impugned order dated 29.11.2018. However, in order to appreciate such issue it would be aposite to bring necessary facts/backdrop in which the proceeding before the Lokayukta proceeded and the impugned order dated 29.11.2018 came to be passed.



4. During the tenure of the petitioner, as an elected Mukhiya of Gram Panchayat, Tineri under Masaurhi Block in the district of Patna, certain irregularities and defalcation of public fund has been noticed in installation of Solar Lights in various Gram Panchayats, including the Gram Panchayat, Tineri. In this connection, several writ petitions, including C.W.J.C. No. 12456 of 2013, was filed, complaining non-installation of Solar Lights and to provide regular Solar Lights to the villages of Masaurhi Block, including Gram Panchayat Raj Tineri. The aforementioned C.W.J.C. No. 12456 of 2013 was heard analogously with C.W.J.C. No. 21443 of 2012 (Nagrik Adhikar Manch, Bihar Vs. The State of Bihar & Ors) whereby the Hon'ble Court having taken note of the materials available on record disposed of the same with an observation, which are as follows:

“We are of the view that except that a general direction be issued to ensure that purchases are made in accordance with law, it is not at all possible to issue any specific direction such as institution of FIR or passing of orders for taking any penal actions. If such proceedings are initiated under compulsion through the Court the rights of the genuine persons are bound to suffer.

We, therefore, dispose of



CWJC No. 21443 of 2012 directing that in the event of purchase of any solar lights turning to be not in accordance with law, necessary steps be taken strictly in accordance with law.

CWJC No. 12456 of 2013 is disposed of with a direction that steps must be taken for installation of solar lights of standard quality in the villages mentioned therein within a period of three months following the prescribed procedure, if not already installed.”

“Emphasis supplied”

5. In compliance of the order passed in C.W.J.C. No. 12456 of 2013, the respondent Principal Secretary, Panchayati Raj Department vide its letter dated 27.03.2015 directed all the concerned, including the District Magistrate, Patna to ensure implementation of the order of the Hon’ble Court by installing the Solar light through the Bihar Renewable Energy Development Agency (hereinafter referred to as ‘the BREDA’). Pursuant to the aforesaid letter, the District Magistrate, Patna vide its letter no. 1334 dated 13.04.2015 (Annexure-3) wrote to the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Patna (respondent no.4) informing him to ensure installation of Solar lights within three months. The copy of the letter has also been addressed to



the petitioner.

6. In response thereto, the petitioner wrote a letter to respondent no.4 seeking guidelines as to from which fund the Solar light is to be installed, clarifying the position that under head of 4th Finance Commission, the fund is not available, thus a request has been made to allow him to utilize the fund as available under the head of 13th Financial Commission.

7. On receipt of the letter of the petitioner, the respondent no.4 vide his Letter No. 102 dated 04.06.2015 (Annexure-5) directed to ensure implementation of the order of the Hon'ble Court, failing which the petitioner would be liable for contempt of the Court. Thus, finally the Solar lights were installed in compliance of the order of the learned Court discussed hereinabove.

8. Simultaneously, Certificate proceedings, bearing Certificate Case No. 60 of 2014-15 and further another Case, bearing Certificate Case No. 303 of 2017-18 were registered, apart from institution of two F.I.Rs. against the petitioner, the first being Masaurhi P.S. Case No. 40 of 2014 and secondly Masaurhi P.S. Case No. 522 of 2016 in respect to the defalcation of the public money and financial irregularity in the process of installation of Solar light.



9. It is the case of the petitioner that so far the Certificate Case No. 60 of 2014-15 is concerned, on demand being raised, the total amount of Rs.6,92,401/- has been returned to the BREDA through a cheque issued on 29.05.2015 under the signature of the petitioner in the capacity of the Mukhiya and Panchayatt Secretary.

10. On the basis of the materials on record, the allegation of embezzlement of public money has been found to be baseless, resulting into closure of the Certificate Case No. 60 of 2014-15.

11. So far the Certificate Case No. 303 of 2017-18 is concerned, it has been submitted on behalf of the petitioner that the same has not been proceeded after payment of an amount of Rs.4,36, 740/- out of an amount of Rs.11,52,000/-.

12. It is also to be noted that so far the criminal cases bearing Masaurhi P.S. Case No. 40 of 2014 is concerned, the investigating officer after making proper investigation submitted final report as a mistake of fact and the petitioner has not even been sent up for trial, which was also accepted by the jurisdictional court. Further in Masaurhi P.S. Case No. 522 of 2016, the allegation against the petitioner has not been found true and, accordingly, charge-sheet has been submitted.



13. It is also to be noted that in the meanwhile a Complaint No. 05/Lok (Panchayat)194/11 was registered before the learned Lokayukta, Bihar against the petitioner on the charges of financial irregularity, for which notice was issued through letter no. 227 dated 02.03.2018, which was also communicated to the petitioner vide Annexures-8 and 9 to the writ petition. The petitioner entered his appearance and filed a detailed reply along with all the necessary documents in support of his case. Needless to observe that the aforesaid reply runs in altogether 52 pages. The matter was taken up by Lokayukta on 29.11.2018 and the impugned order came to be passed on 29.11.2018 itself.

14. Mr. Banwari Sharma, learned counsel for the petitioner while assailing the impugned order dated 29.11.2018 and the proceeding initiated in connection with Complaint No. 05/Lok (Panchayat)194/11 has submitted that apart from the order being illegal and wholly without jurisdiction, the same is cryptic and without application of mind, inasmuch, as there is no consideration of any explanation/reply of the petitioner. He further submits that the respondent Lokayukta exceeded its jurisdiction in purported exercise of executing the order of the Hon'ble Court passed in C.W.J.C. No. 12456 of 2013, despite



the fact, there was no such direction of the Hon'ble Court to get the Solar light installed by the petitioner himself. Further the undertaking as has been allegedly given by the petitioner, which is also noted in the impugned order, is nothing but the result of duress and coercion on account of threatening hurled by the learned Lokayukta to face the dire consequences, if the order is not being implemented.

15. He next submitted that from bare perusal of the order passed by the learned Lokayukta, prima facie, it appears that the reason for passing the order clearly shows malafide in law as well as on facts. Moreover, the learned Lokayukta holding such a higher post must not indulge in making such kind of aspersion against the petitioner in the order impugned, which also reflects the malice and the prejudice mind. It is submitted that the learned Lokayukta has exceeded his jurisdiction vested under Lokayukta Act, 2011 as he has empowered to examine the matter under the Prevention of Corruption Act, 1988 and after conclusion of the enquiry only recommendation is required to be made to the competent authority of the Department to proceed in the matter in accordance with law or to file a case in Special Court, but in the present case nothing has been done.



16. On the other hand, Mr. Kumar Alok, learned SC-7, while refuting the contention of the learned counsel for the petitioner, submits that time without number necessary guidelines and instructions have been issued by the Panchayati Raj Department to ensure implementation of Backward Regions Grant Fund (hereinafter referred to as 'the BRGF') scheme and for purchase of Solar light. The letters issued by the Department in respect to the installation of Solar light has been emphasized by him and submission has been made that in any circumstances the purchase and installation of Solar light have to be made through BREDA as per its prescribed specification. He further drew the attention of this Court to the order of the Hon'ble Court as also the orders issued by the District Magistrate, Patna and the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Patna (respondent no.4) and submitted that there was specific direction to install good quality of Solar lights, 32 in numbers, as it was earlier installed in Tineri Gram Panchayat under Masaurhi Block, which were subsequently found to be defective. He further submitted that the institution of the Lokayukta has been set up in the State under the enactment of Bihar Lokayukta Act, 2011 (hereinafter referred to as 'the Act, 2011'). Under Section 16(1) of the Act,



2011 contemplates the power to inquire into any matter involved in, or arising from, or connected with any allegation or grievance against any public servant made in the complaint in respect of the Local Authority, Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies. The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1) of section 16, if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988.

17. It is lastly submitted on behalf of the respondent State that the petitioner having been realized his mistake has given undertaking before the learned Lokayukta that he will deposit the rest of the amount and now he cannot turn around and assail the same, as it was a consented order. Furthermore, the order impugned cannot be termed illegal and wholly without jurisdiction only on account of certain aspersion made against the petitioner. In various judgments passed by the Apex Court, in such a situation, the learned court has only expunged the aspersion, if the order is otherwise found to be sustainable in law as well as on facts.

18. Before coming to the merit of this case, it would be relevant to discuss the relevant provisions of the Bihar



Lokayukta Act, 2011 (hereinafter referred to as 'the Act, 2011'), which deals with the power of learned Lokayukta. Section 16 of the Act, 2011 talks about the jurisdiction of the Lokayukta and undoubtedly it contemplates the power to enquire into any allegation against any public servant made in the complaint in respect of any Local Authority, Local Self Government, including the Panchayati Raj Institution. Section 27 of the Act, 2011, speak about the action on inquiry in relation to public servants, which reads as follows:

“27. Action on inquiry in relation to Public Servants not being Chief Minister or Ministers or Members of the State Legislature. -

(1) Where after the conclusion of the inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (d), (e), (f) or (g) of sub-section (1) of section 16, any officer authorized by Lokayukta shall-

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority; and

(b) recommend to the competent authority for initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the



public servant or his representative;

(2) The competent authority shall, having regard to the recommendations of the Lokayukta within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Chairperson ordinarily within six months of initiation of such disciplinary proceedings”

19. It would be worth mentioning here that a person being aggrieved of mal-administration within the meaning of Section 2(1) of the Act, he may having grievance under Section 2 (f) of the Act that he had suffered injustice or undue hardship in consequence of maladministration, in such a situation the aggrieved person has a remedy of filing Complaint. The word “Complaint” in Section 29 of the Act has been defined by allegation, grievance or request by whistle-blower for protection.

20. In order to appreciate the issue involved in the matter in hand, it would be useful to take note of a judgement of the learned coordinate Bench of this Court, while dealing with



the object and scope of the Act, 2011, has succinctly held in para. 28 of the judgment in the case of **Bipin Bihari Singh Vs. The State of Bihar & Ors, 2020(3) PLJR 10**, as follows:

“28. Before I conclude, I need to observe that the institution of Lokayukta must remind itself the purpose of its constitution and its own limitations, while exercising its powers and discharging its duties and functions under the Act of 2011. It cannot act beyond the provisions of the Act which has constituted it. The Lokayukta is certainly not a super executive empowered to supervise/ control functionings of the executive and issue commandments to various functionaries asking them to discharge their duties in a particular manner. Further, the Lokayukta does not have any power of judicial review over administrative action, akin to the powers of the High Court under Article 226 of the Constitution of India.”

21. Further the learned Court while considering the provisions relating to the power of the learned Lokayukta has summarized his opinion in para. 21, 24, 25, 26 and 27, which are reproduced hereinbelow:

21. On conjoint reading of Sections 28A and 29 of the Act, I have absolutely no hesitation in reaching a definite conclusion that Lokayukta has no jurisdiction, acting on



a complaint containing grievance of maladministration beyond submitting a report to the competent authority, as defined under Section 2(d) of the Act, prescribing the manner in which injustice or undue hardship has to be remedied or redressed. It is expected of the competent authority to examine the report and inform the Lokayukta, the action taken or proposed to be taken on the basis of the report. In view of clear language used in Section 28A of the Act, Lokayukta does not have any jurisdiction to issue any direction to the competent authority. The provision clearly stipulates that if, on receipt of report from the competent authority, in response to recommendations made by the Lokayukta, the Lokayukta is dissatisfied with the action taken or proposed to be taken, he can make 'a special report to the Governor of the State and inform the complainant in this regard'. Lokayukta does not have any other jurisdiction at all under the Act when the matter is on the basis of a complaint raising a grievance of maladministration.

24. There is no jurisdiction, under the aforesaid provision too, vested in the institution of Lokayukta to direct for initiation of a disciplinary proceeding, unless requisite conditions envisaged in Section 27 of the Act of 2011 are available.

25. On the basis of discussions as



noted above, it can be easily culled out that Section 27 of the Act is the only provision which enables the institution of Lokayukta to make recommendations to the competent authority for initiation of disciplinary proceeding upon recording a finding which discloses commission of an offence by a public servant punishable under the Prevention of Corruption Act, 1988. In case, a recommendation is made by Lokayukta, in exercise of power under Section 27 of the Act, the competent authority is obliged to initiate disciplinary proceeding against the delinquent public servant 'accused of committing the offence under the Prevention of Corruption Act, 1988' and forward its comment on the report including action taken or proposed to be taken thereon, to the Chairperson of Lokayukta within six months of initiation of such disciplinary proceeding.

26. There is no gainsaying that a decision sans jurisdiction is non est. A direction issued by any statutory body, howsoever high the said body may be, cannot be allowed to be sustained, for, anything done in excess of jurisdiction is void ab initio. The impugned order passed by learned Judicial Member of Lokayukta suffers from inherent jurisdictional error. It is settled legal principle which needs no reiteration that absence of jurisdiction in a statutory body goes to the root of the matter, which, if



absent, cannot be conferred, even with the consent of the contesting parties. A decision rendered by any statutory body without jurisdiction is inoperative.

27. If a statutory authority assumes to act in a case over which the law does not give it authority, the proceeding and adjudication will be altogether void. An authority has jurisdiction of any subject matter if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description and not otherwise. (See A Treatise on the Constitutional Limitations by THOMAS M. COOLEY).

22. Now coming to the impugned order; It goes without saying that, prima facie, the learned Lokayukta before coming to the conclusion of the guilt of the petitioner has not considered any of the explanation/reply of the petitioner, filed before the learned Lokayukta. The impugned order has been passed accepting the fact, as if petitioner is held guilty of irregularities and defalcation. However, no reason whatsoever has been assigned to reach that conclusion irrespective of the fact that in the criminal cases, the allegation of financial irregularities has not been found proved, resulting into submission of charge-sheet, as a mistake of fact, which has also been accepted by the jurisdictional court. That apart, the Certificate Proceeding No. 60 of 2014-15 has also been



dropped.

23. So far the undertaking given by the petitioner is concerned, specific denial has been made in para.13 of the writ petition that the same has been obtained under duress and coercion upon the petitioner by giving threatening to him to face dire consequences, if the amount is not deposited. The manner in which alleged undertaking of the petitioner is noted in the impugned order itself and taking note of the submission/ averment of the writ petition, the vice of duress and coercion cannot be ruled out. Time without number, the Court has held that any undertaking obtained under coercion has no legal sanctity and thus not enforceable in law.

23. Further this Court has also carefully gone through the order passed by this Court in C.W.J.C. No. 12456 of 2013, no such direction of the High Court has been found that the installation of the Solar light is to be installed by the petitioner himself at his own cost. Be it noted that the learned Lokayukta has vested with the power to enquire any matter, if it attracts misconduct and irregularities committed by the public servant or representative of the people. However, it is only a recommending authority bound to submit the report before the Secretaries/Principal Secretaries of the respective



department on the basis thereof the Department shall proceed either departmental or to file a case before the Special Court and send a copy of report together with its finding to the competent authority or to take action under any other law.

24. This Court also find merit consideration that the aspersion made against the petitioner in the impugned order is not only unwarranted, but also appears to be prejudicial in nature.

25. On account of the reasons stated hereinabove and also under the settled legal proposition, the impugned order dated 29.11.2018, as contained in Annexure-11 to the interlocutory application, stands set aside.

26. So far the grievance of the petitioner in relation to initiation of a proceeding arising out of case no. 5/Lok (Panchayat) 194/11 is concerned, since the petitioner is now no more public representative and with regard to the alleged financial irregularities the department has had already proceeded under the criminal as well as civil laws and the other remedies are still available, that apart in a complaint of 2011, the notice came to be issued quite belatedly in the year 2018, thus now it is up to the learned Lokayukta, who shall consider the matter of continuation of the proceeding under the relevant



provisions of the Act, 2011.

27. With these observations, the present writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.10.2023
Transmission Date	NA

