

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10248 of 2023

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Sahebganj Block Mukhiya Sangh, District Muzaffarpur Through its Adhyaksh
Awadhesh Kumar (male), aged about- 48 years, son of Ganesh Sah, resident
of village- Basantpur, P.O. Chainpur, P.S. Sahebganj, District -Muzaffarpur
... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar,
Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of
Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Muzaffarpur, District-Muzaffarpur.
5. The District Panchayat Raj Officer, Muzaffarpur, District-Muzaffarpur.
6. The Block Development Officer, Sahebganj, District- Muzaffarpur.
7. The Block Panchayat Raj Officer, Sahebganj, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate
For the Respondent/s	:	Mr. Prem Ranjan Raj, AC to SC -7

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V JUDGMENT

Date : 25-07-2024

Heard Mr. S.B.K. Mangalam, learned counsel for
the petitioner and Mr. Prem Ranjan Raj, learned Assistant
Counsel to Standing Counsel No. 7 for the State.

(A) PRAYER:

2. The present writ petition has been preferred for
the following relief(s):

*(i) for issuance of an appropriate writ
in the nature of CERTIORARI for quashing the
part of the order dated 03.05.2023 issued under the
signature of Respondent no.2 and contained in his
memo no.4881 dated 03.05.2023 and more
particularly the decision with respect to divergent
of funds of Gram Panchayat for construction of
Panchayat Sarkar Bhawan in the left over Gram*



Panchayats of the State as contained in paragraph no.5 (v) and 8(v) of the said order on the ground that in view of the provisions contained under Article 243 (d) of the Constitution of India, Section -2 (w) and Section -26 (5) and (6) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act), if every Gram Panchayat has been conferred power to spend such sums from Gram Panchayat fund as it thinks fit for carrying out the purposes of the Act, the State Government is not competent to issue the impugned order directing for construction of Panchayat Sarkar Bhawan in the left over Gram Panchayats of the State from the funds of the Gram Panchayat and it has also no jurisdiction to divert the funds at the disposal of any other authority.

(ii) for issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 17.09.2021 issued under the signature of the Respondent no.2 and contained in his memo no.5465 dated 17.09.2021, whereby and where under the Respondent no.2 has been pleased to issue instruction for installation of Solar Street Light in the Gram Panchayat of the State and power to select the Agency for installation of Solar Street Lights has been vested in Bihar Renewable Energy Development Agency and further direction has been issued vide paragraph no.7 of the impugned instruction that 75% of total cost for installation of Solar Street Lights would be



managed from the funds received by the Panchayat on recommendation of 15th Finance Commission and rest 25% would be managed from the fund received by the Panchayat recommendation of State Finance Commission.

(iii) for a declaration that after Seventy-Third Constitutional Amendment Act, 1992, the Gram Panchayats has been conferred the status of an Institution of Local Self Government and under Section 26(5) of the Gram Panchayat Act, a fund has been created for every Gram Panchayat and under Sub-Section -6 of Section -25 of the Gram Panchayat Act every Gram Panchayat has been vested with the power to spend such sums from the said fund as it may think fit for carrying out the purposes of the Act, no authority or not even the State Government can issue any direction for diversion of funds of the Gram Panchayat for any other purpose and equally no authority can be created to spend the funds of the Gram Panchayat.

(iv) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to allow the Gram Panchayats to function as an Institution of Local Self Government, to undertake its responsibilities as created upon it by the Seventy-Third Constitutional Amendment Act, 1992 read with Schedule - 11 of the Constitution of India which provides in detail the responsibilities which the Panchayat has to undertake after its



constitution.

(v) the petitioner would further pray for issuance of an appropriate writ in the nature of MANDAMUS, restraining the Respondent State not to interfere in the power and function of the Gram Panchayat as contemplated under Constitution of India and the Bihar Panchayat Raj Act, 2006 and allow the Gram Panchayats to function as a vibrant Institution of Local Self Government which was the object and spirit of Seventy- Third Constitutional Amendment.

(vi) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to allow the Gram Panchayats to spend its fund as per the decision of the Gram Panchayat and not to compel the Gram Panchayats to undertake any scheme within the Gram Panchayat area which is not the scheme of the Gram Panchayat and it has been launched by the State Government even if it is to be implemented under the territorial jurisdiction of the Gram Panchayat.

(B) FACTS:

3. The matter relates to the construction of the Panchayat Sarkar Bhawans as also installation of Solar lights across the State. On 02.12.2022, a letter has been issued by the Monitoring Officer of the Panchayat Raj Department, Bihar, Patna as contained in office memo no. 83 (Aa.) dated



02.12.2022, whereby a sum of Rs. 1,90,13,16,078/- (Rupees One Thousand Ninety Crore Thirteen Lacs Sixteen Thousand and Seventy Eight) has been released district-wise as per the number of Gram Panchayats in the District concerned for the purposes of implementation of Mukhyamantri Rural Solar Street Light Scheme, however, the District Panchayat Raj Officer of the District concerned has been declared as the Drawing and Disbursing Officer of the fund allotted.

4. Again, the State Government came out with another notification vide memo no. 4881 dated 03.05.2023 issued under the signature of the respondent no. 2, the Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna by which approval has been made for the construction of 2000 Panchayat Sarkar Bhawans across the State at the cost of Rs. 41,71,16,00,000.00/-. Further, for its implementation in the District, the Committee is headed by the District Magistrate while at the State level, the same will be monitored by the different Departmental Secretaries beside the Chief Engineer and other officials.

(C) CASE OF THE PETITIONER:

5. It is the case of the petitioner is that curtailing of the administrative as well as the financial powers of Gram



Panchayat and its autonomy is contrary to the provisions of Article-243P, Article -243 G and Eleventh Schedule of Constitution of India read with the provisions contained under Section 25 (5) and 25 (6) of the Gram Panchayat Act. The contention is that if the decisions to construct the Panchayat Sarkar Bhawans has been taken by the State Government, whether the gram panchayat funds can be utilized.

6. Learned Counsel for the petitioner submits that while taking the decision, the State Government has virtually taken away the financial autonomy of the Gram Panchayats and the same as such is fit to be set aside.

7. The petitioner has based his case on the Sections 26 & 27 of the Bihar Panchayati Raj Act (henceforth for short 'the Act') which deals with the property and funds of Gram Panchayat and read as follows:

“26. Property and Funds of Gram Panchayat - (1) A Gram Panchayat shall have the power to acquire, hold and dispose of property and to enter into contract:

Provided that in all cases of disposal of immovable property by the Gram Panchayat, it shall obtain the prior approval of the Government.

(2) All property within the local



limits of the jurisdiction of Gram Panchayat of the nature hereinafter in this Section specified, other than property belonging to or maintained by the Central or the State Government or a local authority or any other Gram Panchayat, shall vest in and belong to the Gram Panchayat, and shall with all other property of whatsoever nature or kind which may become vested in the Gram Panchayat, be under its direction, management and control, that is to say-

(a) All general properties;

(b) All public streets, including the soil, stones and other materials thereof and all drains, bridges, culverts, trees, erection materials, implements and other things provided for such streets;

(c) All public channels, water courses, springs, tanks, ghats, reservoirs, cisterns, wells, aquaducts, conduits, tunnels, pipes, pumps and other water works whether made, laid or erected at the cost of the Gram Panchayat or otherwise, and all bridges, buildings, engines, work, materials, and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank:

Provided that water pipes and water works, connected therewith or



appertaining thereto which with the consent of the Gram Panchayat are laid or set up in any street by the owners of any mill, factory, industry, workshop or the like, primarily for the use of their employees shall not be deemed to be public water works by reason of their being used by the public;

(d) All public sewers and drains and all works, materials and things appertaining thereto and other conservancy works: Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any such sewer or drain the subsoil appertaining thereto shall also be deemed to vest in the Gram Panchayat,

(e) All sewage, rubbish and offensive matter deposited on streets or collected by the Gram Panchayat from streets, latrines, urinals, sewers, cesspools and other places;

(f) All public lamps, lamp-posts and apparatus connected therewith or appertaining thereto; and

(g) All buildings erected by the Gram Panchayat and all lands and buildings or the property transferred to the Gram Panchayat by the Central or the State Government or acquired by gift, purchase or otherwise for local public purposes.

(3) The State Government may,



by notification, exclude any street, bridge or drain from the operation of this Act or of any specified Section of this Act: Provided that if the cost of the construction of the work had been paid from the Gram Panchayat Fund, such work shall not be excluded from the operation of this Act or any specified Section of this Act, except after consideration of the views of the Gram Panchayat at a meeting.

(4) The Government may allocate to a Gram Panchayat any public property situated within its local jurisdiction, and thereupon such property shall vest in and come under the control of the Gram Panchayat.

(5) For every Gram Panchayat there shall be constituted a Gram Panchayat Fund bearing the name of the Gram Panchayat and there shall be placed to the credit thereof-

(a) Contributions and grants, if any, made by the Central or the State Government;

(b) Contributions and grants, if any, made by the Zila Parishad, Panchayat Samiti or any other local authority;

(c) Loans, if any, granted by the Central or the State Government;

(d) All receipts on accounts of taxes, rates and fees levied by it;



(e) All receipts in respect of any schools, hospitals, dispensaries, buildings, institutions or works vested in, constructed by or placed under the control and management of the Gram Panchayat,

(f) All sums received as gift or contribution and all income from any trust or endowment made in favour of the Gram Panchayat,

(g) Such fines and penalties imposed and realised under the provisions of this Act as may be prescribed; and

(h) All other sums received by or on behalf of the Gram Panchayat.

(6) Every Gram Panchayat shall set apart and apply annually such sum as may be required to meet-

(a) The cost of its own administration including the payment of salary, allowance, provident fund and gratuity to the officers and employees.

(b) Every Gram Panchayat shall have the power to spend such sums as it thinks fit for carrying out the purpose of this Act.

(c) The Gram Panchayat Fund shall be vested in the Gram Panchayat and the balance to the credit of the Fund shall be kept in such custody as may be prescribed.



27. Taxation by Gram Panchayat.-(1) *Subject to such Rules as may be made in this behalf and the maximum rates specified by the Government, a Gram Panchayat may impose yearly -*

(a) Tax on occupants of holdings;

(b) On professions, trades, callings and employments carried on or held within the local limits of its jurisdiction a tax on the basis of total annual income accrued from such profession, trades, callings and employments.

(c) May impose property tax (tax on all type of residential and commercial holdings) within the local limits of its jurisdiction.

(2) Subject to such maximum rates as the Government may prescribe, a Gram Panchayat may realize the following fees and rates, namely -

(a) Fees on the registration of vehicles which are not registered under any other law in force at that time;

(b) Fee for providing sanitary arrangements at such places of pilgrimage, haats, melas and public use within its jurisdiction as may be specified by the Government by notification;

(c) Water Rate, where



arrangement for the supply of water for drinking. irrigation or any other purpose is made by or on behalf of the Gram Panchayat within its jurisdiction;

(d) Lighting Fee, where arrangement for lighting of public streets and places is made by or on behalf of the Gram Panchayat within its jurisdiction;

(e) Conservancy Rate, where arrangement for cleaning private latrines, urinals and cesspools is made by or on behalf of the Gram Panchayat within its jurisdiction.

8. Learned counsel for the petitioner submits that a bare perusal of Section 26(5) of 'the Act' would show that the contributions and grants of the Central Government and the State Government has to come to the Gram Panchayat which in turn is to be used by it for the welfare purposes. It is his submission that Sections 26(5) and (6) of 'the Act' confers power upon the Gram Panchayat to spend money as it thinks fit for carrying out the welfare purposes and the State Government is not the Competent Authority in this regard.

9. The further submission is that usurping the power, the State Government under the signature of the Additional Chief Secretary, Panchayat Raj Department, Bihar



Patna (respondent no. 2) came out with notification no. 488 dated 03.05.2023 (Annexure P/7) for the construction of 2000 'Panchayat Sarkar Bhawans' within the State of Bihar. It is his submission that the Government cannot issue any direction for the divergent of the funds of the Gram Panchayats for any purpose as it is a local self government which has been given the responsibilities under the 73rd amendment in the Constitution of India. He further wanted the State Government to restrain from compelling the Gram Panchayats to undertake any scheme which has not been cleared by it. He thus submits that the writ application be allowed.

(D) STAND OF THE RESPONDENTS:

10. The stand of the State as narrated by the learned State counsel is that Article 243(G) of the Constitution of India, the power, authority and responsibility of the Panchayat to function as institution of self government has to be seen along with the decisions of the State Government from time to time with the sole purpose of the welfare of the people of the said area in its mind.

11. It is his further submission that allocation of funds for construction of 2000 Panchayat Sarkar Bhawans across the State cannot by any stretch of imagination be inferred



as usurping the power of the Gram Panchayats.

12. Learned State counsel further submits that at the local level, there is always the chance of use of sub-standard materials by the local functionary and to avoid the same and to bring uniformity across the State, the decision has been taken at the highest level by the State Government to construct the Panchayat Sarkar Bhawans in the manner as envisaged above.

13. He further submits that this will prohibit misappropriation of public money as also allow the State Government to construct quality Panchayat Sarkar Bhawans. Learned State Counsel reiterate that carrying out different development schemes by the State Government in no way curtails the power of the Gram Panchayat and the local functionary. Instead of appreciating and cooperating with the State respondents, they are now coming to the Court challenging it.

14. Learned counsel reiterates that only to construct quality Panchayat Sarkar Bhawans and to bring the uniformity across the State, this decision has been taken which in turn will also put a check and balance through Centralized Monitoring System. He thus prays for the dismissal of the writ petition.



(E) FINDINGS:

15. This Court has taken note of the fact that beside being aggrieved by the notification no. 4881 dated 03.05.2023 issued by the Additional Chief Secretary, Panchayati Raj Department, Bihar Patna, the petitioner also wanted quashing of the memo no. 5465 dated 17.09.2021 issued by the same authority i.e. the respondent no. 2, by which the direction was given for installation of Solar street lights in the Gram Panchayats of the State.

16. The Siwan Zila Mukhiya Sangh earlier moved in **CWJC No. 18566 of 2022** under **Siwan Zila Mukhiya Sangh through its Chairman, Ajay Bhaskar vs. The State of Bihar & Ors** with the same prayer i.e. for quashing of the memo no. 5465 dated 17.09.2021 relating to the installation of the solar street lights.

17. It was heard by the Co-ordinate Bench which vide an order dated 03.11.2023 passed in CWJC No. 18566 of 2022 discussed the said issue and thereafter disposed of the writ petition. It would be appropriate to incorporate paragraph nos. 24 to 27 of the order which read as follows:

24. This Court though finds the submission of the petitioner, merit consideration to the extent of certain



restrictions, excessively imposed upon the Panchayats, such as, making the DPRO as Drawing and Disbursing Officer but the same cannot be said to be usurpation of the power of the Gram Panchayat, if the State taking note of earlier irregularities and pilferage of public money in course of earlier round of implementation of solar scheme, leading to complete failure, has come out with putting some check and balance only to ensure the execution of the scheme meant for the Gram Panchayat itself.

25. Well settled it is that to ensure the rule of law, in all governmental activities, the Court has provided with the power of judicial review to put them within the limits of the constitution. However, having gone through the impugned letter contained in memo No. 5465 dated 17.09.2021 entrusting the power to WIMC for selecting location and further vesting the power to BREDA for selection of service providers for different districts, as also the management of the funds do not suffer from any vice arbitrariness and illegality. That apart, this Court further finds the action of the respondents, in carrying out the development scheme (installation of Solar Light Scheme) is in conformity with the amended provisions of the Amendment Act,



17 of 2017.

26. No case of interference is made out.

27. The writ petition stands disposed of.”

18. In that background, the second prayer of the petitioner already stands rejected and need no further elaboration. The petitioner now restricts his case to resolution no. 4881 dated 03.05.2023 which deals with the construction of 2000 Panchayat Sarkar Bhawans in the State of Bihar for which the State Government has decided to allocate Rs. 41,71,16,00,000.00/-.

19. The State Government further issued guidelines for zeroing in on the land for the construction of Panchayat Sarkar Bhawans. The committee was constituted all over the State of Bihar with the District Magistrate as its Chairman and included the Chief Executive Officer, the District Engineer and the District Panchayat Raj Officer of the Districts while at the State level, it was to be evaluated by the Additional Chief Secretary of the different departments beside the nominee of Hon'ble Minister, In-charge of the said department.

20. This Court at this stage would like to incorporate Section 26(7) of 'the Act' which read as follows:



26(7)- “For equitable development of the Gram Panchayat area, the Government shall be competent to issue necessary instructions to the Gram Panchayat from time to time with respect to utilization and expenditure of money from the Gram Panchayat Fund and such direction shall be binding on the Gram Panchayat.”

21. The aforesaid clause 7 of Section 26 of ‘the Act’ makes it clear that the Government is competent to issue the necessary direction to the Gram Panchayat which has been made binding on the respective Gram Panchayat.

22. It is true that Section 26(5) of ‘the Act’ allows the Gram Panchayats to receive the sums and use it according to the approval made by the Panchayat. However, Clause 26 (7) of ‘the Act’ also gives the power to the Government to issue necessary instructions from time to time with respect to utilization and expenditure of money which in any case is binding on the Gram Panchayats.

23. Again, it is true that Article 243 of the Constitution of India dealing with the Panchayats and brought by way of 73rd amendment in the year, 1992 allows Gram Panchayats to function independently. However, that does not



mean that the State government cannot put the check and balance to see to it that the funds that is going right upto village level, the same is utilized in a proper manner for the betterment of people.

24. In this case, the decision has been taken to construct 2000 Panchayat Sarkar Bhawans across the State. The intent of the Government is very clear. They want a proper Panchayat Sarkar Bhawans which may be used as a multi purpose building and will include the court room of the Gram Kutchery, the reception hall, the residential block for the employees, the computerized Centre, the Pantry as also the wash rooms.

25. The said Panchayat Sarkar Bhawans are being constructed across the State and in that background, to keep uniformity in the construction as also maintain the quality of construction, the Central Monitoring/funding/decision of the agency becomes very important.

26. As has been pointed out by the learned State counsel, not only will it prohibit the misappropriation of fund, the chances of use of sub-standard materials by the local authority can be greatly checked.

27. This Court has further taken note of the fact that



for proper monitoring, a committee has been formed in each district headed by the District Magistrate and includes the officials of the district which shall be further evaluated by the Additional Chief Secretaries of the different departments including a nominee of the Hon’ble Minister in-charge of the department.

28. In that background, this Court holds that the decision of the State Government to construct the Panchayat Sarkar Bhawans across the State is no way usurps the power of any Gram Panchayat which in any case is duty bound to act in line with Section 26(7) of ‘the Act’. When the intent of the State Government is clear and no *mala fide* has been alleged, in the opinion of the Court, putting spoke in the wheels of development needs to be avoided. The petitioner has failed to point out any illegality in the said order.

29. There is no merit in the writ petition. It is accordingly dismissed.

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	16.07.2024
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