IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14515 of 2023

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1. Shrawan Prasad Saw Son of Vaijnath Saw, Resident of Mohalla Pachana Road, Naya Bazar, Ward No. 23, Town Lakhisarai, P.S. Lakhisarai, District- Lakhisarai.
2. Neelam Devi alias Neelam Kumari, Wife of Sanjay Kumar, Resident of Mohalla Mansur Chak, Town Lakhisarai, P.S. Lakhisarai, District- Lakhisarai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Urban Development and Housing Development, Government of Bihar, Patna.
4. The Deputy Secretary, Municipal Administration Directorate, Department of Urban Development and Housing Development, Government of Bihar, Patna.
5. The Director, Municipal Administration Directorate, Department of Urban Development and Housing Development, Government of Bihar, Patna.
6. The District Magistrate, Lakhisarai.
7. The Executive Officer, Lakhisarai Nagar Parishad, Lakhisarai.
8. The Head clerk cum Accontant, Lakhisarai Nagar Parishad, Lakhisarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Om Prakash Maharaj, Advocate
For the Nagar Parishad	:	Mr. Avinash Kumar, Advocate
	:	Mr. Prashant Kumar, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha, AAG- 7
	:	Mr. Deepak Kumar, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 05-01-2024

Heard Mr. Om Prakash Maharaj, learned Counsel appearing on behalf of the petitioners, Mr. Avinash Kumar along with Mr. Prashant Kumar, learned counsels appearing on behalf of the Nagar Parishad and Mr. Yogendra Prasad Sinha, learned AAG- 7 along with Mr. Deepak Kumar, learned AC to AAG-7, appearing on behalf of the State.

2. Petitioners have filed the present writ petition *inter-alia* for the following relief(s):

> "(I) For issuance of appropriate writ/writs specially in the nature of writ of certiorari quashing the Letter No.2029 dated 07.09.2022 as contained in Anneure 7 whereby and whereunder the Executive Officer, Lakhisarai Nagar Parishad, Lakhisarai (Respondent No.7) directed the Head Clerk cum Accountant Lakhisarai Nagar Prishad, Lakhisarai (Respondent No.8) to ensure the refund of the Government amount in the Nagar Parisahd, Lakhisarai account which was transferred in the personal accounts of the Ward Councillors during COVID-19 period to help the poor people of their respective wards by the then Executive Officer of the said Nagar Parishad so that the No Dues Certificate may be issued to the Ward Councillars and also to quash the Letter No.2034 dated 18.07.2023 as contained in Annexure 15 whereby the Deputy Secretary, Municipal Administration Directorate (Respondent NO.4) issued direction to the Respondent NO.7 to recover the aforesaid amount given to the then Ward Councillors during COVID-19 period.
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> (ii) For issuance of appropriate writ/writs, specially in the nature of writ of Mandamus directing/commanding the respondent authorities to pay back the said deposited amount to those ward councilors of Lakhisarai Nagar Parisahd, Lakhisarai who were forced to deposit the said amount while taking No Dues Certificate to contest the general election of Lakhisarai Nagar Parishad along with an interest of 12% per annum from the date of refund till the date of actual payment and further for a direction to the respondent authorities to restrain them taking any action against those ward Councilors who could not pay back the said amount to Nagar Parishad's account and were deprived their legal right to contest the General election of Lakhisarai Nagar

Parishad 2022 for their no fault.

(iii) For issuance of appropriate writ/ writs, direction directions commanding the respondents to pay before compensation to the then Ward Councilors who were forced to deposit the aforesaid amount and also those Ward Councilors who could not contest the election due to non issuance of No Dues Certificate.

(iv) For issuance of any other writ/ writs, direction/ directions, order/ orders for which the writ petitioners are found entitled to under the facts and circumstances of the case.

And/or

Pass such other order/ orders or direction/ directions which your Lordships may deem fit and proper under the facts and circumstances of the case."

3. The contention of the petitioners is that they were posted as Ward Councilors, as mentioned in the cause title of the writ petition. They are aggrieved that an amount of Rs.60,000/- was transferred in their bank account to meet the emergency during the Covid period, which was to be distributed among the inhabitants of the said ward in accordance with the Government of India scheme, which was adopted by the State Government. The petitioners have brought on record the decision of State Government and the Department issued from time to time during Covid pandemic. The petitioners had taken efforts, during Covid period by putting their lives at stake, and distributed the amount to save the lives of the helpless people, who had faced hardship during the said Covid period, which is not unknown to the common citizens of the Country and

particularly by the people of the State of Bihar.

4. Learned counsel appearing on behalf of the petitioners submitted that petitioners are aggrieved by Letter No.2029 dated 07.09.2022, as contained in **Annexure-7**, by which the Executive Officer, Nagar Parishad, Lakhisarai has directed the petitioners through the Head Clerk-cum-Accountant to refund the government amount in Nagar Parishad, Lakhisarai Account. Learned counsel further submitted that even though the petitioners had produced the statement of the expenditure before the Executive Officer, such coercive action, which has been initiated against the petitioners, is required to be interfered by this Court.

5. *Per contra* learned counsel appearing on behalf of the Nagar Parishad, Lakhisarai has invited attention of this Court to Section 75 (d) of the Bihar Municipal Act, 2007, which prescribes procedure as under : -

> *"75 (d) expenses incurred by the Municipality on special measures on the outbreak of dangerous diseases, natural or technological hazards or in any other emergent case,"*

6. Referring to above provision of Section 75 (d) of Bihar Municipal Act, 2007, the learned counsel for the State submitted that the Executive Officer has power to distribute the fund for meeting the untoward incidents faced by the citizens

arising out of natural calamities or outbreak of dangerous diseases.

7. In these backgrounds, learned counsel appearing on behalf of the State submitted that in absence of any detail with respect to expenditure available with the Executive Officer, the Executive Officer had no remedy than to take action against the petitioners, requesting them to return back the entire amount in accordance with audit objection.

8. Heard the parties.

9. Considering the submissions made on behalf of the parties and the pleadings made in writ petition and the counter affidavit, it appears that the Executive Officer without applying his mind has accepted the objection raised by the Accountant General and had sought guidelines from the Department and without consideration of the statements of expenditure submitted by the petitioners, they were served notice, as contained in letter no.2029 of 07.09.2022 (**Annexure-7**). The said act appears to have resulted due to the action of the Deputy Secretary, Municipal Administration Directorate, Department of Urban Development and Housing Development, Government of Bihar (respondent no.4), who without seeking statements of expenditure and their clarification had directed the

Executive Officer to proceed in accordance with the objection raised by the audit team.

10. On consideration of the pleadings made in the writ petition, it appears that **Annexure 7** contains decision of the Standing Committee of Nagar Parishad, Lakhisarai, in which no decision on the statement of expenditure submitted by the petitioners has been taken into consideration. The parties have also not been able to bring on record such decision taken by the Standing Committee or by the Executive Officer. The action of the Executive Officer without verifying the same from the records before the audit team can not be appreciated. The department too had given certain information as contained in **Annexure 15** that for each block, Rs.60,000/- and Rs.40,000/- is required to be paid as depending on the population of block concerned to the helpless people.

11. In the present case, Nagar Parishad, Lakhisarai was given total amount of Rs.17,75,000/-. The Executive Officer has failed to give detail expenditure of the total amount of Rs.17,75,000/- before the audit team and to save himself from any coercive action, he has proceeded to take action against the petitioners and by taking coercive action, the petitioners have been forced to return the entire amount, which

was already spent by them in making payment to the helpless people during the period of Covid Pendamic. As such, letter No.2029 dated 07.09.2022 can not be sustained and is hereby set aside and quashed.

12. The action of the Executive Officer in proceeding to realize the amount from the petitioners, which according to the petitioners have been distributed among the people faced with hardship during the Covid pandemic, in accordance with the policy decision and decision of the Nagar Parishad, Lakhisarai dated 13.04.2020 can not be held to be justified in view of the claim of the petitioners that they had submitted the statement of expenditure to the Executive Officer. The petitioners further claim that the Executive Officer on his part had not produced the statement of the expenditure before the audit team resulting into illegal action taken against the petitioners by not issuing the ‘No Dues Certificate” for contesting, Nagar Parishad Election, 2022.

13. The Deputy Secretary, Municipal Administration Directorate, Department of Urban Development and Housing Development, Government of Bihar is directed to call upon the records relating to the petitioners, who are Ward Councillors, from the Executive Officer relating to the actual

amount transferred in the bank account of the petitioners. The same is required to be verified from the statement of expenditures, which were produced by the petitioners before the Executive Officer. He is also required to summon the Executive Officer concerned, in person, for producing the accounts along with the Accountant of Nagar Parishad, Lakhisarai and seek show cause as to why they have not produced the statement of expenditure, which allegedly according to the petitioners were already submitted by them and was not produced before the Audit Team by the Executive Officer. After collecting all the evidences, respondent no.4 (Deputy Secretary, Municipal Administration Directorate, Department of Urban Development and Housing Development, Government of Bihar) must pass a reasoned order in accordance with law after giving due opportunity of hearing to the petitioners. In case, he finds that the petitioners are not liable to return the amount then in that case, he must take appropriate legal action against all the concerned Officer and further direct to issue 'No Dues Certificate".

14. At this stage, learned counsel for the petitioners informs that the petitioners were forced to deposit the entire amount, which was transferred in their bank account. The

respondent no.4 may after verifying the record arrive that the amount so deposited are required to be returned to the petitioners, the same must be returned within a short span of time. There is no reason in the circumstances to not issue 'No Dues Certificate".

15. With the aforesaid direction, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Chn/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024
Transmission Date	NA