

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6938 of 2018

Nagendra Prasad S/o Late Jai Govind Prasad, present posted as Assistant Settlement Officer, Araria, Settlement Office, Araria Block Campus, P.O., P.S. and District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Gover
3. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
4. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The District Magistrate, Aurangabad.
6. The Sub Divisional Magistrate, Aurangabad.
7. The Director, Urban Development and Housing Department, Government of Bihar, New Secretariat, Patna
8. The Deputy Director, Urban Development and Housing Department, Government of Bihar, New Secretariat
9. The Nagar Panchayat, Navi Nagar through its Municipal President, P.O. and P.S.- Navi Nagar, Distric
10. The Municipal President, Nagar Panchayat, Navi Nagar, P.O. and P.S.- Navi Nagar, District- Aurangab
11. The Nagar Executive Officer, Nagar Panchayat, Navi Nagar, P.O. and P.S.- Navi Nagar, District- Aura

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Binod Kr. Singh, Adv.
	:	Ms.Vagisha Pragya Vacaknavi, Adv.
For the Respondent/s	:	Mr.Abbas Haider- SC6
	:	Mr. Klasi Mohammad, AC to SC6
For the Nagar Parishad	:	Mr. Anil Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

7 06-08-2024 Heard learned counsel for the petitioner and learned counsel for the State.

2. Counsel for the petitioner submits that the present writ petition has been filed for quashing letter-cum-order contained in Letter No.139 dated 09.03.2018 issued under the signature of Nagar Executive Officer, Nagar Panchayat Navi



Nagar, Aurangabad whereby and whereunder the petitioner was directed to deposit Rs.51,42,122/- (Fifty one Lacs forty two thousand one hundred twenty two rupees only) (amount of Yojna No.16/2011-12 and 03/2010-11) by draft/bankers' cheque in the office of Nagar Panchayat, Navi Nagar within 10 days so that the information may be given to the District Magistrate, Aurangabad and thereafter, a compliance report could be sent to the Hon'ble Lokayukt.

3. Counsel for the petitioner submits that the petitioner was holding the post of Circle Officer, Navi Nagar and he was given additional charge of the post of Nagar Executive Officer, Navi Nagar by Order No.69 of the District Magistrate. He further submits that the petitioner joined the said post on 11.08.2011 without any training. He further submits that the petitioner had to discharge the official duties of both post at the same time. Both the offices were situated at a distance of about 3 km.

4. Counsel further submits that under Yojna No.16/2011-12, the petitioner has paid Rs.6,90,406/- (Rupees Six Lac Ninety thousand four hundred six only) to the contractor for construction of PCC road from Main Road to Navi Nagar, Police Station which was duly received by him on



19.12.2021 through cheque. He further submits that as per the notings of the Head Clerk -cum- Cashier on the file of Yojan No.16 of 2011-12, the office of Nagar Executive Officer, Navi Nagar had put up the file for payment according to Measurement Book, Enquiry Report of Junior Engineer, Assistant Engineer, and QCR (quality control report) in which the quality of the material was found, according to the prescribed standard and the petitioner has made the payment after receiving the aforesaid reports.

5. Counsel further submits that when the petitioner got notice about non-completion of work within time limit, then immediately, he deducted 10% amount for delayed completion of work, directing the Head Clerk to deduct 10% amount from the security and advance money. He further submits that the petitioner has written letter asking show cause from Junior Engineer-cum-Rural Works Division-1, Aurangabad, but none of them filed their show cause. In this regard, the petitioner has also wrote letter to the Joint Secretary, Urban Development and Housing Department, Bihar Patna and also to the District Magistrate, Aurangabad.

6. Counsel further submits that without any proof, it cannot be said that the amount of Rs.6,90,406/- has been



allegedly misappropriated by the petitioner.

7. Counsel further submits that opportunity of hearing was given to the petitioner and the detailed facts about misappropriation of amount has already been stated in his show cause.

8. Counsel further submits that so far as Yojna No.2 of 2010-11 is concerned which relates to the construction of Nala from Dome Toli to Punpun Nadi, the payment of only Rs.15,76,609/- for the first running bill was made on 14.04.2011, when the petitioner was not posted as Nagar Executive Officer, Navi Nagar. The said payment was made under the signature of Municipal President and then the BDO-cum- Nagar Executive Officer, Navi Nagar. The payment of second running bill was also made by the same BDO, Navi Nagar and the payment of third running bill was made to the contractor on 31.10.2011 when the petitioner had assumed the charge of Nagar Executive Officer, Navi Nagar. Thus, the petitioner has only paid Rs.9,49,096/- to the said yojna and rest amount was paid by the successor of the petitioner.

9. Counsel further submits that the SDM, Aurangabad has submitted his report contained in letter No.71 dated 14.03.2013 to the DM, Aurangabad who asked show cause from



the petitioner, then the petitioner has submitted his show cause to the District Magistrate, Aurangabad.

10. Counsel further submits that for the Yojna No.16 of 2011-12, the petitioner has paid only Rs.6,90,406/- for construction of PCC road from main road to Navi Nagar P.S. Thereafter 10% was also deducted for delayed completion of the work on 22.02.2012 amounting to Rs.79,794/-. The petitioner further paid Rs.9,49,096/- only on 31.10.2011 in Yojna No.3 of 2010-11 for construction of Nala from Dome Toli to Punpun Nadi to the contractor. Thus the allegation of embezzlement of Rs.51,42,122/- is ex-facie false.

11. Counsel further submits that the petitioner is being made escape goat for compliance report to be submitted before the Lokayukt behind the back of the petitioner and without giving him any opportunity of hearing either before the Lokayukt or before the respondent authorities.

12. Counsel further submits that the impugned order has been passed without any order passed against the petitioner in respect of the aforesaid recovery in any departmental proceeding and thus the impugned order which is punitive in nature is in conflict with the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.



13. Counsel for the State submits that the order passed by Lokayukt is for recovery of misappropriated amount and it is due to this reason, action has been initiated against the petitioner.

14. Counsel for the State further submits that a counter-affidavit has been filed on behalf of the respondent No.2 to 4 stating therein that vide letter No.1359 dated 13.08.2013, the District Magistrate, Aurangabad has reported to the Principal Secretary Urban Development Housing Department, Bihar Patna with respect to a complaint received through letter No.1220 dated 27.03.2012 of the Joint Secretary, Lokayukt Bihar Patna, thereafter an enquiry was conducted on the complaint by the Sub-Divisional Officer, Aurangabad and the Sub-Divisional Officer sent the enquiry report vide letter No.71/Estt. Dated 14.03.2013 mentioning therein the allegation made, the opinion has been given that the records/evidences provided by the Executive Officer, Nagar Panchayat, Navi Nagar and show cause reply received from him have proved the allegations made by the complainant. It has further been reported by the District Magistrate, Aurangabad that the in light of the enquiry report, a show cause was sought from the petitioner. Subsequently, reply to the show cause was filed by



the petitioner, but the explanation given the petitioner in his reply to the show cause do not found acceptable by the authority. As a result, the recommendation was made by the District Magistrate, Aurangabad for taking necessary action against the petitioner.

15. Counsel further submits that after conducting departmental inquiry, a report dated 20.06.2018 was submitted by the conducting officer -cum- Additional Collector, Aurangabad to the Disciplinary Authority. In the light of the report dated 20.06.2018, a second show cause notice was issued to the petitioner by the Revenue and Land Reforms Department, Government of Bihar, Patna and after receipt of reply to the second show cause from the petitioner, a letter No. 898 dated 08.10.2018 was issued by the Revenue and Land Reforms Department, Government of Bihar, Patna to the Urban Housing Department, Bihar Patna for taking opinion of the Urban Development and Housing Department on the second show cause filed by the petitioner. He further submits that the Disciplinary Authority has conducted the departmental proceeding and found the charges levelled against the petitioner proved and awarded punishment of "*demotion to the lowest order of the salary*".



16. Counsel further submits that the decision taken by the Disciplinary Authority is in accordance with law and in this background, the writ petition filed by the petitioner is fit to be dismissed.

17. Upon hearing the parties and after going through the annexures of writ petition and counter-affidavits, it transpires to this Court that the writ petition has been filed primarily to set aside the letter No.139 dated 09.03.2018 by which direction was made by the Executive Officer, Nagar Panchayat, Navi Nagar to the petitioner to make payment of Rs.51,42,122/- within 10 days from the date of issuance of the letter through drafts/bankers' cheque in the name of Nagar Panchayat, Navi Nagar. In the said letter, the Executive Officer has categorically mentioned that due to order passed by Hon'ble Lokayukt with regard to regularity, the letter for realization of said money has been issued.

18. From the order dated 24.08.2017 passed by the Lokayukt, Patna in Case No.12 of 2012, the direction has been made which is quoted herein below:-

“Put up this case accordingly for further enquiry and hearing as a part heard and tied matter on 19.02.2018 by which the Principal Secretary of Revenue and Land Reforms



Department, Bihar Patna, Principal Secretary of Urban Development and Housing Department, Bihar Patna and the Collector, Aurangabad district would not only ensure submissions of supplementary report as with regard to completion of the departmental proceeding against Shri Nagendra Prasad, the then Executive Officer, Nagar Panchayat, Navi Nagar, Aurangabad, but also steps taken for recovery of the misappropriated amount by him in league with the contractor.”

19. It further transpires to this Court that from the report of the Enquiry Officer that it has been found that the allegation of payment of Rs.6,99,800/- and Rs.9,49,096/- had been made during his tenure to the contractor and rest payment has not been made during his period. In the departmental proceeding, the petitioner has not found guilty of misappropriation of Government money in collusion of contractor and for his guilt, he had been punished relating to salary. It is a specific pleading of the petitioner that he has disbursed the amount Rs.9,49,096 in Yojna No.3 of 2010-11 and Rs.6,90,406 in Yojna No.16 of 2011-12 and payment of Rs.51,42,122/- to the contractor has not been made during his period. On this point, there is no reply of the respondents in the counter-affidavit and as such, the findings of Executive Officer



for realization of said amount Rs.51,42,122 is not correct.

20. Hence, the order impugned vide Annexure-P/1 letter No.139, dated 09.03.2018 is hereby set aside due to the reason that the Lokayukta has passed order in which it was directed to take steps for recovery of misappropriated amount by him in league with the contractor, but there is no such ascertainment made by the Executive Officer, Nagar Panchayat, Navi Nagar by which it transpires that the petitioner has misappropriated the said amount in league with the contractor.

21. In this view of the matter, the present writ petition is hereby allowed with liberty granted to the Nagar Panchayat, Navi Nagar to take legal steps completely in accordance with law as ascertain by Lokayukta in consonance with his order dated 24.08.2017 in Lokayukta Bihar, Patna 01/Lok (Nagar Vikash Vibhag) 12 of 2012. In case of any such proceedings, the Executive Officer is hereby directed to provide opportunity to the petitioner and others to place their stand before the authority.

22. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J.)

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