

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8495 of 2018

1. Manoj Kumar Mandal and Ors Son of late Budh Deo Mandal R/o Village P.O.- Gogari, District- Khagaria.
2. Awadhesh Kumar Son of late Ramautar Singh R/o Village P.O. Badiya,P.S. Gogari, District-Khagaria.
3. Pradeep Malakar Son of late Ramswarup Malakar R/o Village- Rupni Karua, Chautham, P.S. Chautham, District- Khagaria.
4. Md. Kasim Son of late Abdul Hadi R/o VillageP.O. - Mushkipur, P.S. Gogari, District Khagaria.
5. Suresh Prasad Yadav Son of late Somar Yadav R/o Village-Awash Board, P.O. Koshi College, District- Khagaria.
6. Mahendra Sharma Son of Sukhdeo Sharma R/o Village- Muskipur, P.S. Gogari, P.O. Jamalpur, District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Panchayati Raj Department, Patna, Bihar.
3. The Director, Panchayati Raj, Patna,Bihar.
4. The District Magistrate, Khagaria.
5. The Block Development Officer, Parbatta, Khagaria.
6. The Deputy Development Commissioner,Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Adv.
For the Respondent/s	:	Mr.Pratik Kr. Sinha -Adv.
	:	Mr.Ajay -GA5
	:	Mr.Saurav Kr. AC to GA5.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 19-06-2024 Heard learned counsel for the petitioners and
learned counsel for the State.

2. Counsel for the petitioners submits that the
petitioner No.5 died during pendency of the writ petition.
Therefore he submits that for petitioner No.5, this writ petition



become infructuous.

3. Counsel for the petitioners submits that all petitioners are Panchayat Secretary of different Panchayat in same Block Gogari, District- Khagaria. He further submits that the District Magistrate vide common order has decided to take action against them for recovery of the price of solar lights and has been ordered to be recovered from the salary of the petitioners and side by side by the order of District Magistrate along with departmental proceeding was directed to be initiated against him even though respective certificate case which was registered by the respondent for recovery of amount is still pending for adjudication. Counsel submits that to avoid the multiplicity of litigation, the petitioners have filed common writ petition.

4. Counsel further submits that the policy decision has been taken at the level of the Government to install the solar lights by the Panchayat units at the appropriate places with the consent of Gram Sabha. Accordingly, a policy decision was taken by the unit of Gram Sabha, duly approved by the DDC -cum- Chief Executive Officer under the guidelines issued for investment of Backward Region Grant Fund(BRGF), the solar lights have been installed. It has been alleged that the said



scheme of solar light has to be executed as per the rate fixed by BREDA or by the tender.

5. Counsel further submits that according to policy, the Panchayati Raj Institution is free to select the agency for which the work of BRGF has to be executed. He submits that the petitioners were serving as Panchayat Secretary for installation of solar lights and for installation of solar lights, the Panchayat units have taken decision. After taking decision in the meeting of Gram Sabha, a local tender were floated, applications were invited and at the rate of Rs.48,100/- per solar light, 11 solar lights were installed in the year 2009-10 and subsequently, under another scheme also, solar lights were installed. But subsequently, after installation of the solar light, it was alleged that the petitioners have purchased the solar light at the higher price than the price quoted by the BREDA.

6. Counsel further submits that the petitioners were completely unaware about the said facts and only due to this reason, it was decided at the level of the District Magistrate to take action against the petitioners and in this regard, respective certificate case was also instituted against them. In addition to that departmental proceedings were also directed to be initiated as well as recovery of amount has been directed to made from



the salary of the petitioners.

7. Counsel further submits that the petitioners has committed no wrong according to the then available information. They have purchased the solar light following the due tender process and if any wrong done on their part, then it is not malafide rather bonafide due to the reason that they were completely unaware about those letters that for the purchase of solar lights, the guidelines of the BREDA has to be followed.

8. Counsel further submits that the respective certificate case has also been pending, therefore till finalisation of respective certificate case, no recovery ought to be made from the petitioners.

9. Counsel further submits that after filing of the writ petition, this Hon'ble Court has immediately stayed the recovery from the petitioners' salary and State was directed to file counter-affidavit. The present status is that the State has already filed the counter-affidavit.

10. Counsel for the State submits that it is true that recommendation of initiation of the departmental proceeding has been made at the level of the District Magistrate, recovery case has also been instituted against the petitioners. It has also been directed to make recovery from the salary of the



petitioners.

11. Counsel for the State further submits that in the light of the stay order passed by this Hon'ble Court dated 04.05.2018 by which the recovery from the petitioners has been remained stayed. No further recovery has been made.

12. Counsel further submits that the Panchayat Secretary is the public officer and District Magistrate is competent authority to initiate action against them. It is not illegal and it is completely in accordance with law. Filing respective certificate case against them for recovery, is also legal and it is well within the jurisdiction of the District Magistrate.

13. Upon hearing the parties, it transpires to this Court that the decision taken by the Panchayat Secretary to purchase the solar light has been made ignoring the departmental guidelines, is intentionally or ignorantly shall be the subject matter of the test in the appropriate proceeding, and therefore, at the level of this Hon'ble Court, it is not possible to look into those disputed questions. As such, this Court is also not inclined to interfere in the certificate proceeding pending against the petitioners, and therefore, this writ petition stands disposed off directing the certificate officer to conclude the respective



Certificate Proceeding in accordance with law within 6 months and the said departmental proceeding which has been recommended is also directed to be concluded within the said period of 6 months in accordance with law.

14. So far as the recovery from the salary of the petitioners is concerned, it is directed that the said direction for recovery is not lawful till completion of the respective certificate case/departmental proceeding.

15. Accordingly, the present writ application is hereby disposed off.

(Dr. Anshuman, J.)

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