

(2023) 05 PAT CK 0044

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 193 Of 2020

Molayasa Khatun

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 10, 2023

Acts Referred:

- Bihar Panchayat (Inspection of Offices and Inquiry into Affairs Supervision and Guidelines) Rules, 2014 - Rule 4, 4(2), 4(3), 4(4), 9
- Indian Penal Code, 1860 - Section 120B, 409, 420
- Bihar Panchayati Raj Act, 2006 - Section 146

Hon'ble Judges: Dr. Anshuman, J

Bench: Single Bench

Advocate: Rajendra Narayan, Asit Kumar Jha, Md. Nadim Seraj

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioners and the State.
2. The present writ petition has been filed for quashing of first information report bearing Sangrampur P.S. Case No. 268 of 2019, dated 06.12.2019, lodged under Sections 420, 409 and 120B of the Indian Penal Code, 1860, pending in the Court of the Sub Judge XIV-cum-Additional Chief Judicial Magistrate, East Champaran at Motihari.
3. Mr. Rajendra Narayan, learned Senior Counsel, assisted by Mr. Asit Kumar Jha, counsel for the petitioners submits that the petitioners are duly elected members of Ward Nos. 5, 9, 10 and 11 of the Gram Panchayat Raj Pashchmi Madubani, Dariyapur, district East Champaran at Motihari. Counsel for petitioners submits that the said first information report has been lodged in gross violation of Rule 4(2) and Rule 9 of the Bihar Panchayat (Inspection of Offices and Inquiry into Affairs Supervision and Guidelines) Rules, 2014, (hereinafter referred to as, "the Rules") framed by Panchayati Raj Department vide Notification No. 8Ps/IV-04-103/2010/9817, dated 15th December, 2014, published in Bihar Gazette Extra Ordinary No. 185, dated 16th January, 2015, in exercise of the power conferred by virtue of Section 146 of the Bihar Panchayati Raj Act, 2006 (Bihar Act 6, 2006).
4. The counsel for the petitioners without entering into the merit and demerit of the allegations made submissions that Rule 4(2) of the Rules state that the enquiry of any affair of the Gram Panchayat shall be done with the written order of the District Magistrate. He further submits that Rules 4(3) and 4(4) of the Rules empowers the District Magistrate to enquire into such affairs in which complaints have been received against the Mukhiya, Up-Mukhiya, Members and the Executive Officer of the Panchayat

or Panchayat Samiti with regard to not discharging functions according to the provisions of the Act, ignoring or willfully omitting the direction of the Government or competent authority or committing financial irregularity by the officer of the district whom think fit, but, not below the rank of Subdivisional Magistrate.

5. Counsel submits that here in the present case from the contents of the first information report it transpires that the said enquiry was conducted by the Block Development Officer, who is the officer below the rank of Subdivisional Magistrate. Similarly, there is gross violation of Rule 9 of the Rules, according to which, if a clear case of financial irregularity or misconduct made on the basis of the enquiry into any Panchayat, the District Magistrate, in case of Gram Panchayat and Panchayat Samiti, whereas the Divisional Commissioner in case of Zila Parishad, may order to file the first information report against the public representative/Government Official responsible for such irregularity or misconduct, but, it shall be compulsory to intimate the Panchayat Raj Department regarding such action as soon as possible.

6. Counsel for the petitioners submits that here in the present case there is gross violation of Rule 9 of the Rules as there is no instruction done by the District Magistrate to file first information report.

7. On these two grounds, the counsel for the petitioners submits that the institution of the first information report is bad in law and in gross violation of Panchayati Raj Act, 2006, and its Rules, i.e., the Bihar Panchayat (Inspection of Offices and Inquiry into Affairs Supervision and Guidelines) Rules, 2014, framed under Section 146 of the said Act.

8. The counter affidavit has been filed in this case in which the stand of the State is very clear that the due enquiry was conducted by the Block Development Officer and it has been found that the petitioners are involved in the financial irregularities and misconduct relating to work of Gram Panchayat and it is due to this reason the said first information report has been lodged. He submits that the point raised by the petitioners is mere an irregularity and it may be ignored or permitted to be ratified.

9. Upon going through the submissions made by the petitioners and the points raised in their pleadings, this Court is of the view that the Legislative intent of the Law Maker under the Bihar Raj Panchayati Raj Act and its Rule, i.e., the Bihar Panchayat (Inspection of Offices and Inquiry into Affairs Supervision and Guidelines) Rules, 2014, are very much clear and any executive is bound to follow the Legislative instructions in the way it is being drafted and if such instruction has not been followed in its true spirit and sense then any action shall not be treated as irregular rather it is illegal in the eye of law and not sustainable in view of this Court. Hence, there is a gross violation of Rule 4 and Rule 9 of the Rules, therefore, any action done in violation of the Rules is illegal and a non-jurisdictional action of the State.

10. In this view of the matter, the first information report bearing Sangrampur P.S. Case No. 268 of 2019 is hereby set aside, but, under the Statute, liberty is always with the officials to act and take action against the illegalities, misconduct etc. of the wrong doers, completely and fully, in accordance with law.

11. With these observations, this writ petition is allowed.