
(1990) 10 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 4792 of 1982

Fulena Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-10-1990

Acts Referred:

Citation : (1991) 1 BLJR 316 : (1991) 1 PLJR 471

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The petitioner was acting as Mukhiya of Chorauli Gram Panchayat within Bhagwanpur Block in the year 1978 and claims that he is holding the office till date. Respondent Nos. 8 to 15 are the elected Members of the Executive Committee of the said Gram Panchayat and Respondent Nos. 16 to 24 are the Members of the Gram Kutchehry. According to the petitioner there is no Panchayat Bhawan in Chorauli Gram Panchayat. For want of a Panchayat Bhawan, the Mukhiya and the Members were facing difficulty in holding meeting of the Gram Panchayat and carrying out the other statutory duties.

2. It is stated that in a meeting of the Mukhiya, the Members of the Executive Committee, the Sarpanch and the Panches held on 4.7.1980, it was resolved to construct a Panchayat Bhawan in village Bhikahmpore. The minutes of the said meeting are annexed as Annexure-3 to this writ application. It seems that subsequent to the said decision in the meeting, by communication contained in Memo No. 5478 dated 8.8.1981, the Director, Panchayat Raj (Respondent No. 2) directed that since an assurance has been given by the Government in Legislative Assembly that Panchayat Bhawan will be constructed only in the headquarters of the Panchayat, the Panchayat Bhawan of Chorauli Gram Panchayat cannot be constructed in village Bhikhampore. Pursuant to the said direction the Block Development Officer, Bhagwanpur Hat, issued letter No. 636 dated 21.8.1981 (Annexure-2) directing the petitioner not to take steps for

construction of the Panchayat Bhawan at village Bhikhampore.

3. The submission made on behalf of the petitioner is that in view of Rule 3 of the Bihar Panchayat Miscellaneous Rules, 1961 (hereinafter referred to as "the Rules") the respondent Director and/or the Block Development Officer has no power to interfere with the decision taken at a meeting of Mukhiya, Members of the Executive Committee, the Sarpanch and the Panches, as contemplated under Rule 3 and as such the orders and directions contained in Annexures-1 and 2 are without any authority of law and, accordingly the same be held as inoperative and unjustified.

4. Rule 3 of the said rules reads as under:

locating of Panchayat Officer.--(1) The Officer of a Panchayat shall be located at the Panchayat Bhawan of the Panchayat:

Provided that if any Panchayat has not got its own Panchayat Bhawan the Office of the Panchayat shall be located at such a place in the Panchayat area as may be unanimously decided in. a meeting of the Mukhiya, the members of the Executive Committee, the Sarpanch and the Panches convened for the purpose and presided over by the District Panchayat Officer:

Provided further that if there is a difference of opinion regarding the selection of a place where a Panchayat Bhawan should be located, a decision may be taken by putting the matter to vote in which the District Panchayat Officer shall not have the right to vote and in case of equality of votes, the Mukhiya shall have second or casting vote.

(2) The District Panchayat Officer shall inform the Sub-divisional Magistrate and the District Magistrate about the place selected for locating a Panchayat Bhawan.

(3) A decision regarding the location of "Panchayat Bhawan" under Sub-rule (1) shall be final and no appeal shall lie against such decision.

5. No body has appeared on behalf of the respondents to contest the submissions made by the petitioner.

6. Rule 3(3) of the Rules provides that "a decision regarding the location of "Panchayat Bhawan" under Sub-rule (1) shall be final and no appeal shall lie against such decision."

7. In view of aforesaid provisions it is apparent that the decision with regard to the construction of a Panchayat Bhawan lies exclusively within the domain of the body as contemplated under first Proviso to the aforesaid rules and neither Director of the Panchayati Raj nor for that matter any other authority has any competence to interfere with the said decision and/or to issue any direction for setting up of a Panchayat Bhawan in any particular village. The decision has to be taken only by the statutory body at a meeting convened by them in accordance with the rules and the decision taken by them is final. The decision arrived at as aforesaid cannot be subjected to any interference by the respondents.

8. Accordingly, I hold that the directions as contained in Annexures-1 and 2 are contrary to the statutory provisions and have been given without any sanction of law.

9. Accordingly, I hereby quash Annexures-1 and 2 and direct that the Panchayat Bhawan be constructed in accordance with the decision taken by the statutory body provided under the first Proviso to Rule 3 of the Bihar Panchayat Miscellaneous Rules.

10. The writ application is allowed. There will be no order as to cost.