
(2015) 04 JH CK 0130
In the Jharkhand High Court
Case No : WP(C) No. 5025 of 2013

Shibnandan Sah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Jharkhand Panchayat Raj Act, 2001 — Section 26, 30
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2015) 2 JLJR 548

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.P. Roy, Ranjit Kumar and Ramit Satendra, for the Appellant;
Bhawesh Kumar and Ravi Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Aggrieved by order as contained in memo dated 7.11.2012 whereby, the financial power from the petitioner who was elected as Mukhiya in the Village-Pandaha has been taken away and transferred to the Deputy Mukhiya, the present writ petition has been filed. The writ petitioner was elected as Mukhiya of Gram Panchayat-Pandaha in the year, 2010 and he was discharging his duties as Mukhiya to the best of his capabilities. A First Information Report was lodged, on the basis of the written report dated 28.6.2012, against the petitioner on the allegation that the petitioner was realizing money from the beneficiaries for recommending their names for allotment of Indira Awaas and for old-age pension. The petitioner approached this Court in A.B.A. No. 3647 of 2012 and vide order dated 8.11.2012, this Court granted benefit of anticipatory bail to the petitioner. However, the Deputy Commissioner vide order dated 7.11.2012. ordered for stripping-off the financial power and same has been conferred upon the Deputy Mukhiya.

2. The learned counsel for the petitioner refers to impugned order contained in Memo dated 7.11.2012 and Section 30 of the Jharkhand Panchayati Raj Act and

submits that the Deputy Commissioner has no power or jurisdiction to withdraw financial power of a Mukhiya. Section 30 of the Act talks of removal of Mukhiya under certain conditions and power under Section 30 cannot be exercised by the Deputy Commissioner. It is further submitted that without issuing any show-cause notice and without affording opportunity of hearing to the petitioner, order contained in Memo dated 7.11.2012 has been passed which requires interference by this Court.

3. I find that the impugned order contained in Memo dated 7.11.2012 reflects registration of a criminal case against the petitioner. Order dated 8.11.2012 in A.B.A. No. 3647 of 2012 also records the allegation of realizing money from the beneficiaries for recommending their names for allotment of Indira Awaas and for old-age pension. The petitioner was granted privilege of anticipatory bail on the ground that such recommendation is made by the gram panchayat and not by the petitioner alone. Order contained in Memo dated 7.11.2012 refers to letter dated 18.9.2012 which contains allegations against the petitioner. The Block Development Officer, Godda has made a written report on the basis of which First Information Report being Godda (T) PS Case No. 315 of 2012 has been lodged for offences under Sections 406 and 420 IPC. Section 30 of the Act provides for removal of Mukhiya on the charge of misconduct or for the charge of negligence in discharging duties or in other incapacity to function as Mukhiya and Deputy Mukhiya. Section 26 provides that for removing Mukhiya or the Deputy Mukhiya, a no confidence motion has to be taken in a special meeting of members which shall be approved by 3/4 of the total numbers of members. Obviously, the Deputy Commissioner has no power to remove the Mukhiya and therefore, he has rightly not removed the petitioner from the post of Mukhiya. However, since the petitioner has been given financial powers under the Act and the Rules framed thereunder, in view of the allegations levelled against the petitioner, the Deputy Commissioner has rightly passed order restraining the petitioner from exercising financial powers. Considering the above facts, issuance of show-cause notice to the petitioner was mere formality and therefore, no exception can be taken to the order contained in Memo dated 7.11.2012 on the ground of violation of rules of natural justice. I find no infirmity in the impugned order dated 7.11.2012 and accordingly, the writ petition is dismissed.