

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15396 of 2019

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Kaushal Kaushik son of Late Jagdish Prasad resident of Village- Nisarpura,
P.O. Amarpura, P.S. Naubatpur, District- Patna. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Special Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The State Election Commission Municipality, Bihar through the State Election Commissioner.
6. Gita Devi, Wife of Avinash Kumar Singh, Resident of Village- Aropur, P.O. Amarpura, P.S. Naubatpur, District- Patna.
7. Devanti Devi, Wife of late Pancham Kumar, Resident of Village- Amarpura, P.O. Amarpura, P.S. Naubatpur, District- Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. S.B. K. Manglam, Advocate
For the Respondent/s	:	Mr.Kinker Kumar (Sc9)
		Mr. Zaki Haidar, AC to SC -9
For SEC		Mr. Sanjeev Nikesh, Advocates
For Pvt. Res.		Mr. Ranjeet Kumar, Advocate
		Mr. Kundan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 15-11-2019 It appears that after the order as contained in Annexure 'P-15' was stayed by this Court, a no confidence motion was brought against the petitioner and now he has been removed through 'No Confidence Motion'.

In that view of the matter, it is crystal clear that the order as contained in Annexure 'P-15' has lost its significance and no relief is to be granted in this writ application.

However, at this stage, Mr. Manglam has raised a



significant issue in the facts of the present case which will have a bearing upon the practice being followed by the Hon'ble Departmental Minister and the Principal Secretary of the Department while hearing the quashi judicial matters and discharging their statutory duties. In the order dated 31.07.2019 this Court has taken note of the specific averments of the petitioner in paragraphs 53 to 57 of the writ application which are being reproduced hereunder:

“53. That, the aforesaid letter of Respondent no. 2 was since not served upon the petitioner before 1 P.M. of 18.06.2019, he was not aware about the date fixed for hearing. He was, therefore, neither in position to appear before the Respondent no. 2 personally nor he had any occasion to authorize any lawyer to appear on his behalf while the matter was to be heard by the Hon'ble Minister at 1:00 P.M. of 18.06.2019.

54. That, the petitioner would state that the aforesaid letter of Respondent no. 3 contained in memo no. 2916 dated 10.06.2019 was served upon the petitioner through the Jail Superintendent on 18.06.2019 but at 4:55 P.M. and by that time everything was over.

55. That, at this juncture, it is relevant to state that along with the petitioner, the proceeding under Section 25(5) of the Municipal Act was initiated against the Deputy Chief Councilor of Naubatpur Nagar Panchayat also and she was also directed to appear in the office chamber of the Hon'ble Minister on 18.06.2019 at 1:00 P.M. for the purpose of hearing.

56. That, the petitioner has been informed that on



18.06.2019, the Deputy Chief Councilor along with his lawyer went to the office chamber of Hon'ble Minister for the purposes of hearing but the Hon'ble Minister was not available in his office, the learned Advocate of the Deputy Chief Councilor met the private Secretary of the Hon'ble Minister when he was told that the Hon'ble Minister would not hold the court today for the reason that in view of the sudden tour program of the Hon'ble Chief Minister of Muzaffarpur District, the Hon'ble Minister is staying at Muzaffarpur to receive the Hon'ble Chief Minister.

57. That, other lawyers had also gone to attend their cases fixed for hearing before the Hon'ble Minister at 1 P.M. of 18.06.2019 but since the Hon'ble Minister was not available, the learned Advocate of the Deputy Chief Councilor as also the other lawyers had filed their attendance before the private Secretary of the Hon'ble Minister and thereafter they came back.”

This Court, thereafter, noticed that in the counter affidavit filed on behalf of the respondents no. 2, 3 and 4 no specific denial of those statements were given. This Court, therefore, granted time to learned counsel for the answering respondents to file an additional counter affidavit to meet the aforesaid issues and stayed Annexure 'P-15' to the present writ application.

A supplementary counter affidavit has been filed on behalf of respondent no. 2. Again in the supplementary counter affidavit only vague statements have been made in paragraph 5



(b), (c), (d) and (e) which are being extracted hereunder for a ready reference:

b. It has been confirmed from the cell of Hon'ble Minister that this proceeding was under hearing through department file no.5 Na/vividh-14/2019 by which both Chief Councilor (through Jail Superintendent, Adarsh Jail, Beur) and Deputy Chief Councilor were requested to appear in this proceeding on 18.06.2019 at 1.00 PM and it was in the knowledge of cell of the Hon'ble Minister. Accordingly, the tour programme was prepared by the cell of the Minister. Due to hectic activities/Programme of Hon'ble Minister, it was informed by his personal staff to the cell of Minister that if any urgent issue of office is required, Hon'ble Minister will be available in the office within one hour.

c. It has been mentioned in the para 56 of the writ petition that learned advocate of Deputy Chief Councilor came to cell of Hon'ble Minister and met the Private Secretary of the Hon'ble Minister but the name of the Private Secretary has not been mentioned. There are more than one Private Secretaries of the Minister.

d. The Tour Programme of the Hon'ble Minister was not prepared suddenly. It was issued on 14.06.2019 which is much prior date of hearing i.e. 18.06.2019 vide memo no.809 dated 14.06.2019 and as per record, the tour programme was not ever revised.

e. That with regard to Para 57 of the writ petition, it is stated that any Private Secretary of the Hon'ble Minister is not authorized to deal with any Quasi-Judicial matter of the Department as it is clear from perusal of the notice of attendance issued by the concerned Section of the Department. If they were present on the given date, i.e. 18.06.2019, the learned advocate of Deputy Chief Councilor should have



approached to the concerned section of the Department for filling the attendance.”

Mr. Manglam has submitted that the manner in which the respondent no. ‘2’ has repeatedly come with vague statements which are in fact in the nature of false statements made before this Court, the affidavit is required to be rejected and a serious view of the matter be taken.

This Court has perused the statements referred above. It is crystal clear from a bare reading of the statements that the deponent of the affidavit admits that it was in the knowledge of the Cell of the Hon’ble Minister that the case was fixed on 18.06.2019. It further admits that there was a tour programme which was prepared by the Cell of the Minister but there was information received through the personal staff of the Hon’ble Minister to the Cell that if any urgent issue of office is required, the Hon’ble Minister will be available in the office within hour.

Having said so, the deponent of the affidavit has maintained a complete silence as to whether the Hon’ble Minister was in fact present at Patna on 18.06.2019 and if at all he was present at Patna then why no ordersheet of 18.06.2019 was recorded saying that the petitioner was not produced from the Central Jail, Beur because of lack of resources and further that the Deputy Chief Councilor was present with her Advocate.



The affidavit does not dispute the assertion of learned counsel Mr. Manglam that he was himself present on 18.06.2019 with the Deputy Chief Councillor but it vaguely states that the learned counsel has not disclosed the name of the Private Secretary whom he had met.

In the opinion of this Court, this is nothing but a mere pretext on the part of the respondent no. 2 to vaguely get rid of all the specific assertion of the petitioner. If it is the statement of respondent no. 2 that the Cell of the Departmental Minister was aware of the matter having been fixed on 18.06.2019 then why respondent no. 2, before filing the present affidavit did not inquire from the said Cell as to whether or not the learned Advocate had come to attend the proceeding. The fact remains that while answering paragraph '56' of the writ petition, the respondent no. 2 does not deny that Deputy Chief Councillor along with her lawyer was present on 18.06.2019 for purpose of hearing. It is not denied that the Departmental Minister had stayed at Muzaffarpur on that day, therefore, the statement that the Cell of the Departmental Minister was informed by personal staff of the Departmental Minister on 18.06.2019 that for any urgent issue the Departmental Minister will be available in his office seems *prima-facie* wrong.



It has not been denied that an attendance was filed by the learned Advocate on the said date with the Private Secretary of the Departmental Minister. Annexure R2/B which is said to be the tour programme of the Departmental Minister has been enclosed but without any assertion that as per the said tour programme, the Departmental Minister had come back to Patna at 11:30 A.M. on 18.06.2019 and that he was available in his Chamber at 1:00 P.M.

This Court further finds that while answering paragraph '57' of the writ application, the respondent no. 2 has made statement that any Private Secretary of the Hon'ble Minister is not authorized to deal with any quashi judicial matters of the Department and as such the learned Advocate should have approached to the concerned Section of the Department for filing the attendance. Again, this is a completely vague statement and cannot be appreciated by this Court. There was a date fixed in the matter, if the Hon'ble Minister was not likely to be there on the said date and time, it was incumbent upon the concerned Section or whosoever was responsible to deal with the said file to inform the learned Advocate(s) over their mobile about the unavailability of the Hon'ble Minister.

Learned Advocate has informed this Court that in



these quashi judicial matters whenever the Advocates are going to attend in the Chambers of the Hon'ble Minister or to the Chambers of the Principal Secretaries of the Departments, they are often asked to meet the clerks and Section Officer and they remain waiting without any information as to when the Hon'ble Minister or the Principal Secretary will be available to attend the proceeding.

Mr. Manglam has submitted that he has personally experienced this on many occasions and this goes against the dignity of the legal profession and a lawyer.

While in this case the Court is not granting any relief to the petitioner in view of the subsequent development, being a constitutional Court sitting under Article 226 of the Constitution of India, this Court deems it just and proper to take judicial notice of the statements made by Mr. Mangalm, learned counsel supported by other learned counsel at the Bar.

From the averments in the affidavit and the circumstances which have been explained to this Court, this Court deems it just and proper to direct the Departments of the Government and the Principal Secretaries in the Government Departments who are discharging their quashi-judicial and statutory powers in connection with a matter in which lawyers



are engaged to ensure that:

(i) whenever they fix a case to be taken up on a particular date and time and for any reason they are not likely to be available, it should be notified in advance on the website of the Department on the previous day itself or to the learned Advocates of the parties on their respective mobile numbers so that their precious time may be saved in coming to the Department and remained sitting there awaiting the arrival of the Departmental Minister or the Principal Secretary;

For this purpose the Mobile Numbers of the learned Advocates must be procured in the records and information be sent well in time.

(ii) Adequate sitting arrangements be made for the learned Advocates who come there in the Department to attend the proceedings where they can wait for their turn to be called out; and

(iii) It will be the duty of the concerned Section Officer or the Assistant dealing with the case in the office of the Departmental Minister and the Principal Secretary to collect the attendance from the learned Advocates before start of the proceeding and it should be ensured that the Advocates are not compelled to move from table to table and persuade the



Assistants and the Section officers of the Department to accept their attendance or any other documents of the concerned case.

The quasi-judicial and statutory authorities must ordinarily avoid taking any other work on the date and time fixed for purpose of hearing of a matter unless prior information of not taking up the matter is conveyed to learned Advocate(s) in terms stated above.

Violation of the aforesaid directions, if brought to the notice of his Court will be taken seriously.

It is to be kept in mind that the Lawyers are the Officers of the Court and whenever they visit the Department in connection with their case, their dignity as a Lawyer has to be taken care of.

In the present case, having gone through the averments made in the writ application and the information furnished to this Court by Mr. Manglam and the manner in which it has been replied in the supplementary counter affidavit saying that he should have gone to the concerned Section to file his attendance, this Court is of the considered opinion that the affidavit sworn on behalf of respondent no. 2 has not been sworn with sense of responsibility. Mr. Mangalm has shown that subsequently on 20.06.2019 a notesheet was prepared under



signature of the Departmental Minister authorizing respondent no. 2 to deal with the matter without recording the true and correct fact that on 18.06.2019 the Departmental Minister was not present and on the said date the records were not put up.

For the present this Court would not enter into further discussion on the manner in which the records have been dealt with in the Department as the discussion made above are speaking for themselves.

With the aforesaid observations and directions the writ application stands disposed of.

Let a copy of this order be sent to the respondent no. 1 & 2 as well as to the Secretary, Department of Law, Government of Bihar who will bring this order to the notice of all the Departments of the Government of Bihar and quasi-judicial authorities for compliance.

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(Rajeev Ranjan Prasad, J)

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