

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18566 of 2022

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Siwan Zila Mukhiya Sangh through its Chairman Ajay Bhasker Chauhan (male), aged about 43 years, son of Subhash Chandra Chauhan, resident of Village- Lakshmipur, P.O. Belaspur, P.S. Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Siwan, District- Siwan.
5. The District Panchayat Raj Officer, Siwan, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam with Mr. Awnish Kumar, Ms. Anita Kumari, Mr. Kumar Gaurav and Mr. Vikash Kumar Singh, Advocates
For the State	:	Mr. P. K. Shahi, A.G. with Mr. Ajay, GA-G, Mr. Pratik Kumar Sinha, AC to GA 5 and Mr. Saurav Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
C A V J U D G M E N T

Date : 03-11-2023

This Court has heard Mr. S. B. K. Mangalam, learned counsel for the petitioner and Mr. P. K. Shahi, learned Advocate General, Bihar, duly assisted by Mr. Ajay, learned G.A.-5 for the State.

2. The petitioner is the District Association of Mukhiya in the district of Siwan, known as Siwan Zila Mukhiya Sangh represented through its Chairman, preferred the present writ petition invoking the extraordinary jurisdiction of this



Court under Article 226 of the Constitution of India for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the letter dated 17.09.2021 issued under the signature of the Respondent no.2 and contained in his memo no.5465 dated 17.09.2021, whereby and where under the Respondent no.2 has been pleased to issue instruction for installation of Solar Street Light in the Gram Panchayat of the State and power to select the Agency for installation of Solar Street Lights has been vested in Bihar Renewable Energy Development Agency (hereinafter referred to as BREDA) and further direction has been issued vide paragraph no.7 of the impugned instruction that the 75% of total cost for installation of solar street lights would be managed from the funds received by the Panchayats on the recommendation of 15th Finance Commission and rest 25% would be managed from the fund received by the Panchayats on the recommendation of State Finance Commission.*

(II) For a declaration that if the Panchayats have been defined an Institution of Self Government constituted under Article 243B of the Constitution and Article 243G of the Constitution has cast a duty upon the State Government to endow the Panchayat with such powers and authority as may be necessary to enable them to function as the Institution of Self Government with respect to :-

(a) The preparation of plan for economic development and social justice; and

(b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to



the matters listed in the Eleventh Schedule,

The impugned notification issued by the Respondent no.2 which is a direct interference of the State Government on the autonomy of the Panchayati Raj Institution in relation to the matters listed in Eleventh Schedule, the impugned notification issued by the Respondent no.2 cannot be sustained in the eye of law and is therefore, fit to be set aside.

*(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to not issue any further instruction in future which directly affects the authority of Panchayati Raj Institution specially in respect of implementation of schemes in relation to the matters listed in Eleventh Schedule since such instruction would be contrary to the object of Seventy- Fourth Constitutional Amendment Act, 1992 read with Article 243 (d) and 243 G of the Constitution of India.*

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The matter was earlier heard by learned coordinate Bench of this Court and *vide* order dated 10.04.2023, the learned Court had meticulously taken note of all the detailed submissions of the petitioner, thus, this Court thinks it apposite to quote the order dated 10.04.2023 containing the submissions of the petitioner for proper appreciation of the matter, which reads as follows:



“.....The learned counsel for the petitioner starts the case with the quotes of Mahatma Gandhi- “If we would see our dreams of Panchayat Raj i.e. true democracy realize, we would regard the humblest and lowest Indian as being equally the ruler of India with the tallest in the land.”

The learned counsel for the petitioner next submits that the history of village Panchayat can be traced from the ancient times, village Panchayats were mentioned in Kautilya's Arthashastra. The name of the town was Pur and Nagrik was the chief. Local governments were not subject to royal meddling. It is next submitted that during British period, village Panchayats lost their independence, sheen and became weak. But the colonial uprising of 1857 had placed colonial finance under lot of pressure, thus it was decided to fund local services through local taxes, which led to Lord Mayo's resolution on decentralization of 1870, thereafter Lord Ripon gave this institution the much needed democratic set up in 1882. Thereafter, when Royal Commission on centralization in 1907 was chaired by C.E.H Hobhous, gave further boost to Local Self Government. It was in this background that Montagu Chelmsford Reforms of 1919 transferred municipal authorities to provinces.

The learned counsel for the petitioner next submits that by 1925, 8 Provincial Governments had enacted Panchayat Act by 1925 and 6 indigenous States had implemented Panchayat laws by 1926.

It is next submitted that Article 40 of the Constitution of India incorporates Panchayat and Article 246 of the Constitution of India authorizes the State Assembly to legislate on any topic relevant to Local Self Government, but the framers of the Constitution at the time of framing of the



Constitution did not universally agree on the incorporation of Panchayat in the Constitution. It was only after much debate, as would be evident from the constitutional debate that rural Panchayat found place under Article 40 of the Constitution of India under the Directive Principles of State Policy.

The learned counsel submits that since Directive Principles of State Policy are not legally enforceable, as such the Panchayat was not having the powers/teeth to work as an institution of Local Self Government. It is submitted that the Parliament realizing the importance of Local Self Government, as part of true democracy, brought the 73rd constitutional amendment giving constitutional legitimacy to the Panchayati Raj institution and defined the power and functions by incorporating Panchayat within Part IX of the Constitution of India.

The learned counsel for the petitioner next submits that 73rd amendment, 1992 added Part IX to the Constitution of India titled the Panchayat covering provisions from 243 to 243 (O) and a new XI Schedule was added covering 29 subjects within the functions of Panchayat which also included rural electrification and related works. The learned counsel next submits that the 73rd amendment incorporates Article 40 of the Constitution of India, which implies that the State shall take steps to organize village Panchayat and endow them with such powers and authority as may be necessary to enable them to function as Units of self government and thus has upgraded them from a non justiciable to justiciable part of the Constitution, requiring States to enact Panchayati Raj Act in accordance with Part IX of the Constitution.

The learned counsel next submits that though the vision of the parliament to enact Part



IX of the Constitution was to ensure Local Self Government, the bedrock of true democracy, but then 73rd amendment simply requires the establishment of local self governing body, leaving the discretion to delegate powers and responsibilities and money to State Legislature, this is where the Panchayati Raj institutions are failing, as devolution of power for the last 31 years i.e. since 1992 has been relatively low, as Panchayati Raj institutions were never transferred with responsibility and financial autonomy, though Bihar Panchayat Raj Act incorporates financial autonomy, in true sense, as State Executive Authorities have sprung up to fulfill the role of Panchayat Raj, as absence of fund for Panchayat Raj institution is the biggest flaw. It is next submitted that the State Government must expressly authorize the power of tax to Panchayati Raj institution, as 73rd amendment make this a decision for State Legislatures to make, which the State of Bihar has not done so far in the manner the Constitution envisages with respect to Panchayati Raj, despite the fact that Financial Commissions at all levels have called for more devolution of finance.

The learned counsel next submits that uncertainty in allocation of functions and funding has allowed States to consolidate power, preventing elected representatives who are much more aware and emphatic to ground level issues from taking control. It is thus submitted that fiscal autonomy combined with budgetary discipline can give a long term answer or else Panchayati Raj institution will be a costly abject failure. It is next submitted that in the interest of the institution and democracy, co-operative federalism and social inclusiveness should be incorporated by the Government by framing law.

The learned counsel after making these



submissions now reverts to the pleadings made in the writ application and submits that the State Government in tune with 73rd constitutional amendment enacted Bihar Panchayat Raj Act, 1992 by repealing Bihar Panchayat Raj Act, 1947. The Bihar Panchayat Raj Act, 1993 was repealed by Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the '2006 Act') which also defined Panchayat as an institution of Local Self Government as is evident from Section 2W of the 2006 Act. It is next submitted that Section 22 of the Act of 2006 Act defines the functions of the Gram Panchayat which is in pari materia to the provisions contained in the XI Schedule of the Constitution of India and under Section 25 of the Act of 2006, provisions were made for Constitution of statutory committee of the Gram Panchayat for effective discharge of its function. The Public Works Committee of the Gram Panchayat was authorized to perform the functions relating to all kinds of construction and maintenance including rural housing, services of water supplies, roads and other means of communication, rural electrification and related works.

It is next submitted that provisions contained under Section 25 of the 2006 Act, was amended by Amendment Act 17 of 2017. It is submitted that prior to amendment, the Standing Committee of the Panchayat under Section 25 of 2006 Act were given power to perform in the field entrusted to different committees, but after amendment in Section 25, different Standing Committees of the Gram Panchayat were conferred jurisdiction only for monitoring and supervising the function related to different subjects as provided under the XI Schedule of the Constitution of India read with Section 22 of the 2006 Act.

The learned counsel next submits that by



Amendment Act 17 of 2017, Section 170(b) was inserted in 2006 Act under which the State Government has been conferred with the power to constitute a Ward Implementation and Management Committee (hereinafter referred to as the 'W.I.M.C. ') by Ward Sabha for discharge of its functions and under Section 170B(2), the duties and functions of the W.I.M.C. was defined but its responsibilities were only confined to select appropriate locations on behalf of Ward Sabha for public sanitation unit and other public amenity scheme etc.

It is submitted that in continuation of the aforesaid amendment in 2006 Act, the State Government in the department of Panchayati Raj has issued Memo No. 5465 dated 17.09.2021 (Annexure-1 to the writ application) whereby the WIMC has been entrusted with power for selecting places for installation of solar street lights and Gram Panchayats have been given the power for selection of 10 more locations for installation of solar lights other than the location selected by W.I.M.C., but power to select and constitute service provider for different districts have been vested in Bihar Renewal Energy Development Agency (hereinafter referred to as 'BREDA') with the support of Technical Assistant appointed by the Panchayati Raj Department.

It is next submitted that by Memo No. 7325 dated 29.07.2022 issued by the Panchayati Raj Department (Annexure-2 to the writ application) the Panchayats have been conferred with the power for grant of administrative sanction of the estimates prepared by the BREDA. Further, by Memo Dated 16.11.2022 (Annexure-3 to the writ application) a direction has been issued with regard to release of fund by Gram Panchayat for implementation of Mukhyamantri Rural Solar Light Scheme.



It is submitted that in view of Memo Dated 16.11.2022, a meeting was convened on 19.11.2022 (Annexure-4 to the writ application) under the Chairmanship of the District Magistrate, Siwan in which several schemes were taken but without any representation from the Gram Panchayat, further in the next meeting convened by District Panchayat Raj Officer on 26.11.2022, as is evident from the letter dated 22.11.2022 (Annexure-5 to the writ application) no representative from the Panchayat of Siwan were allowed to participate in the meeting convened with regard to Mukhyamantri Rural Solar Light. It is further submitted that slowly the power of the Local Self Government is being eschewed by the bureaucratic control being exercised over the Panchayati Raj institution, as would be evident from the letter dated 02.12.2022 (Annexure-6 to the writ application) issued by the Monitoring Officer of Panchayati Raj Department, whereby a sum of Rs. 1,90,13,16,078/- has been released district wise as per number of Gram Panchayat in the district for the implementation of the Mukhyamantri Rural Solar Light Scheme, however the District Panchayat Raj Officer has been made Drawing and Disbursing Officer of the allotted fund.

The learned counsel submits that the letter dated 02.12.2022 has been issued in breach of Section 26(5) and 26(6) of the Act of 2006, which mandates that for every Gram Panchayat, there shall be constituted a Gram Panchayat fund which will receive contribution and grants, if any, made by the Central or the State Government, Zila Parishad, Panchayat Samiti or any other local authority.

It is thus submitted that the grants so released should be credited in the account of the Gram Sabha in view of Section 26(5) of the Act but



from the letter dated 02.12.2022, it is evident that the amount would not be credited in the account of Gram Panchayat rather D.P.R.O has been made Drawing and Disbursing Officer, as such the money will be withdrawn from the Treasury itself.

The learned counsel submits that that it is not the question of money that the Gram Panchayat intends to usurp but the issue is whether the autonomy as envisaged after 73rd amendment to the Constitution giving constitutional legitimacy to the Local Self Government even after 31 years of its enactment has been achieved or not.

It is submitted that in the entire scheme the only power conferred upon Panchayat is to prepare a consolidated list of location in different Wards of Gram Panchayat and then to forward to the B.P.R.O who will bring it to the notice of D.P.R.O to make the list available to BREDA.

The learned counsel further submits that the State Government has not only interfered with the autonomy of Gram Panchayat rather has eschewed all the financial powers, when the object of 73rd Constitutional amendment was to constitute Gram Panchayat as an institution of Local Self Government and to enable them to function as vibrant institution with greater people participation in managing its own conduct and affairs, but the State Government instead of making the institution vibrant and independent is making the institution dependent by curtailing financial powers.....”

4. It is to be noted that after having considered and taking note of the afore-noted submissions advanced on behalf of the petitioner, the Court has directed the Principal Secretary, Panchayati Raj Department to file supplementary counter



affidavit duly sworn by him, keeping in mind the pleadings and submissions made by the learned counsel for the petitioner.

5. A question was posed before the respondents to answer with clarity as to whether any endeavour(s) at the level of the State Government are being made or not to make Panchayati Raj institution independent in its working by giving financial autonomy or check and balances are still required. It was also directed to the respondents to respond as to whether any institution can develop vibrantly without any financial autonomy, as in the matter in hand an impression has been put forth to the Court that all the financial control is with the State authorities and the elected representatives of the Panchayat are merely mute spectators.

6. In deference to the order of this Court dated 10.04.2023, a counter affidavit has been filed, duly sworn by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna. Mr. P. K. Shahi, learned Advocate General, in response to the question put forth by this Court, has firstly taken this Court to the Article 243-G of the Constitution of India and submits that undoubtedly the power, authority and responsibilities, necessary for the Panchayats to function as institution of self government is always subject to the condition



with respect to the provisions of the Constitution and the legislature of the State, which may by law endow upon it such powers and authority with respect to the preparation of plans as also for the implementation of the scheme for economic development and social justice as may be entrusted to them, including those in relation to matters listed in XI Schedule.

7. He has further taken this Court to Article 40 of the Constitution of India and submits that it is the State who shall take steps to organize village panchayat and endow them with such powers and authority as may be necessary to enable them to function as Units of self government. Referring to the afore-noted constitutional provisions, he submits that by no stretch of the imagination, the State Government has made any endeavour to eschew the financial autonomy of the Panchayat which is necessary for its development and function vibrantly.

8. Mr. Shahi, learned Advocate General submits that before addressing the Court on the point in issue, it would be relevant to give a historical overview of the case and thus he submits that the Gram Panchayats in addition to executing different development schemes, were earlier entrusted with responsibility of installing solar lights from the funds available under the Backward Regions Grant Fund, Central Finance



Commission Grants and State Finance Commission Grants. Despite the direction that the required material/equipment shall be purchased from manufacturers duly certified by MNRE/BREDA, sub-standard materials at high rates by the manufacturers in collusion with the Mukhiyas/Secretaries of Gram Panchayat were installed. In view of the large number of complaints made by the people at large, the matter was enquired into by the district authorities and the Department of Panchayati Raj *vide* its letter No. 6300 dated 30.08.2013 issued detailed instructions regarding installation of prescribed standard quality of solar equipment in all the districts through fair and transparent process of purchase and maintenance thereof. The question of use of sub-standard materials in collusion with the suppliers, spurious firms and the Mukhiyas/Secretaries of the Panchayat causing misappropriation and pilferage of huge public money came into the light, resulting into lodging of multiple criminal cases against the erring people's representatives and many of them were also removed from their posts by invoking the provisions under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act, 2006').

9. It is further submitted that under Section 22(viii)



and (ix) of the Act, 2006, the Gram Panchayats have been entrusted with functions of executing rural water supply schemes and construction and maintenance of village roads, drains etc. To enable the Panchayats in promoting the healthy life of its citizens, the State Government has implemented important schemes encompassing the rural populace, such as *nal jal yojana* and *gali nali pakkikaran yojana*, which turned out to be extremely successful and have been appreciated at all the forums. The scheme was duly implemented by Ward Implementation and Management Committee (hereinafter referred to as the 'WIMC') constituted at the Ward level in Bihar, which was pioneer in the country and based on the experience and achievements.

10. Solar street lights remain the priority of the State Government along with other basic amenities, the State Government has launched the scheme of solar street light in phase-wise. In first phase, four wards of each Gram Panchayat shall be covered under the Scheme. In addition to site selection for installation of solar lights by the WIMC, the Gram Panchayat shall separately select 10 locations, that it thinks appropriate to cover. The selection of the locations would thus become collective responsibility of the Wards and the Gram



Panchayats and shall be placed and approved in the meeting of the Gram Panchayat under the Chairmanship of the Mukhiya.

11. Mr. Shahi, learned Advocate General next submitted that the Gram Panchayat does not mean only Mukhiya of the Gram Panchayat, the members elected from each electoral territorial constituency (Ward) of the Gram Panchayat are part and parcel of this institution. The WIMC are the extending and assisting arms of the Gram Panchayat in carrying out the development schemes assigned to it and in no way curtailing the powers of the Gram Panchayats. Rule 16(9) of the Bihar Ward Sabha and Ward Implementation and Management Committee Conduct of Business Rules, 2017 empowers the government/Gram Panchayat/Ward Sabha to direct WIMC to execute scheme/programmes/responsibilities to be assigned from time to time. Moreover, Section 170(C) of the Act, 2006 empowers the State Government to issue directions to Gram Panchayats to implement schemes approved for the Ward through Ward Implementation and Management Committee from the Gram Panchayat funds. He further submits that all the Gram Panchayats and the control of the Mukhiya over Wards or WIMC is not eroded as under Section 170(B)(3) of the Act, 2006 for executing public works scheme; the WIMC



shall function under the Public Works Committee under Section 25(1)(vi) of the Act, 2006 and the Mukhiya is *ex-officio* Chairman of the said Committee.

12. The WIMC at each Ward is a legal Committee constituted under Section 170B of the Act and its relevance, propriety and legality has been duly upheld by the Division Bench of this Court in ***CWJC No. 8698 of 2017*** titled as ***Bihar Pradesh Mukhiya Mahasangh, Chapra Vs. The State of Bihar & Ors.***, which order has also been upheld by the Hon'ble Supreme Court in ***SLP(C) No. 36658-36659 /2017 vide order dated 10.01.2018.***

13. He further highlighted the important steps for effective implementation of the Schemes, as has been laid down in the departmental Letter No. 7335 dated 29.07.2022 and with reference thereto he further submits that the success of the Scheme depends upon the collective efforts of the Gram Panchayats and district authorities. The 75 per cent of the funds earmarked is to be transferred in the account of the Gram Panchayat which has to accord administrative sanction for releasing the funds. Only 25 per cent of the fund consisting of State Plan Fund is to be allocated to DPRO to ensure that complete payment is made to the executing agency on time



after completion of work.

14. Making all the afore-noted submissions, Mr. Shahi, learned Advocate General thus concluded that government has no intention to deprive the Gram Panchayat from the funds to which they are entitled to but learning from the past experiences, some check and balance is necessarily required to be adhered with so as to ensure smooth execution of the programme. In order to make the scheme transparent, there is provision of technical management of the scheme through Remote Monitoring System, Centralized Monitoring System, People Oriented Management through Interactive Voice Response System and Centralized grievance Redressal Cell which have been made to effectively monitor the system.

15. He lastly submits that the installation of solar lights system can only be achieved through a guided supervision/directives of the experts. The village institutions are not equipped with expertise either on the point of quality or price/cost of equipment and, thus the guided development through inclusion like BREDA is being utilized for better results. To promote the development of schemes and non-conventional energy sources, BREDA has been established and thus it has been nominated as nodal agency to carry out the



remote village electrification programme which agency is technically sound and empowered agency and competent to analyse technical viability of the solar light equipments. The Panchayats do not have any established system around them which can hold them in regard to selection of appropriate service providers/agency. Drawing the attention of this court to letter no. 5465 dated 17.09.2021, he narrated the function/facilities/technical support as would be provided by BREDA in the implementation of the Schemes. While highlighting the function/technical support, as has been elaborately mentioned in the counter affidavit, he submits that like GST it was implemented on cooperative federalism model, the actual implementation is through a cooperative effort, where not only the BREDA but the Wards, the Gram Sabha, Gram Panchayat, the District Panchayat Raj Officer (DPRO) and the District Level Coordination Committee, all have vital roles to play.

16. This Court has given anxious consideration to the submissions made on behalf of the parties and also perused the materials available on record. It is well settled that in our constitutional scheme every power is coupled with duty under the constitutional scheme inherently implies/restrains, the



exercise of power with utmost circumspection and responsibility. The Panchayati Raj was introduced as institution of grass root democracy for economic and social justice at the grass root level to ensure the participation of the people in the matter of development, planning and execution. The Amendment Act, 2017 is designed to ensure more participation of the people at grass root level by incorporating the scheme of Ward Sabha. Learned Division Bench of this Court in ***Bihar Pradesh Mukhiya Mahasangh, Chapra Vs. State of Bihar and Ors.***, AIR 2018 Patna 29, while considering the challenge to the validity of the Bihar Panchayat Raj (Amendment) Act, 2017 has been pleased to observe that, “apart from Article 243-G which enables the State to enact law in order to endow Panchayati Raj Institution to function as a unit of self-Government, Article 40 of the Constitution also ordain the State to take steps to organise village panchayat. In addition thereto, Entry 5 of the State List also enables the State Legislature to enact law in the matter of local self government”.

16.1 The learned Court has further held, “that economic development and social change under Article 243-G does not militate against the idea of decentralizing the power and creating the institution of Ward Sabha. There is no restriction or limitation on the State Legislature on creation of



Committees, like Ward Sabha for inclusive and overall economic and social change as the benefit of development must reach the remotest one is the constitutional goal and in furtherance of the said goal and in order to ensure balance development of the village panchayat, if the State Legislature has provided for Ward Sabha, there is no illegality or unconstitutionality.” The learned Court has not found any infirmities in the amendment in Section 25(1) of the Act. It has been made clear that challenge as to the framing of Committees subject to rules made in this behalf by the government in no way creates hurdle in exercise of power and function of Panchayati Raj Institution and different committees of the Gram Panchayat and Public Works Committee is vested with monitoring and supervision of the function relating to all construction and maintenance, which does not in any manner indicate that the Gram Panchayat is divested with power in relation to construction and maintenance of rural housing, source of water supply, road and other means of communication etc.

16.2 The learned Division Bench of this Court has further held that by inserting the provision under Section 26 of the Act to regulate the user of the panchayat fund in no way



interfere with the autonomy and the scheme has to be read in light of Sections 153 and 156 of the Act which provides for control by way of inspection and all offices of the Panchayat, Records and Accounts thereof and non-obstante clause under Section 156 to issue direction in the matter of State Policy and the matter of public importance, the direction of the State Government is already available in the Act.

17. It is worth to be noted and one must remind itself of the famous words of Lord Acton that power tends to corrupt and absolute power corrupts absolutely, thus every power under the scheme inherently implies/restrains the exercise of power with utmost circumspection and responsibility. In a country governed, by Rule of Law, wherever there is conferment of power, of necessity there is bound to control. Uncontrolled power is bound to lead to arbitrariness. An authority vested with power owes an obligation to fulfill the purpose for which power is conferred and to act within, the framework of law. Under the Rule of Law, whether the system of check and balances appropriately operates is ultimately to be scrutinized by the Court and in order that the system of Rule of Law be maintained, the Court has to strike down every arbitrary act and require the exercise of power to conform to the requirements of



law.

18. The main objective behind the establishment of Panchayati Raj institution is social justice, economic empowerment. The XIth Schedule of the Indian Constitution deals with the power, authority and responsibilities of the Panchayats, 29 subjects, including rural electrification and distribution of electricity over which the Panchayats have jurisdiction. The function of the Gram Panchayat is to implement and execute various government schemes and programmes. Identifying the beneficiaries of various schemes and programmes in case Gram Sabha fails to do so. Levying and collection of local taxes.

19. The object of the Solar Light Scheme to ensure rural electrification in the Panchayat is clear and loud that the village streets remain well lighted during the night in the villages imbining the sense of security and lessening the inconvenience and discomfort to the populace and to ensure development in all the fields.

20. It is to be worth noted that due to lack of availability of resources such as financial and human resources, the Ward Implementation and Management Committee has been constituted to extend the assistance to the Gram Panchayat



in carrying out the development schemes, which shall function under the supervision of Mukhiya of the Gram Panchayat and the Mukhiya is the *ex officio* Chairman of the Public Works Committee under Section 25(1)(vi) of the Act, 2006. The requirement of expert agency, which is technically equipped, empowered and competent is inevitable to achieve better result on the point of quality or price/cost of equipment and render proper facilities and technical support in the implementation of the scheme.

21. This Court finds substance that the corruption as has been highlighted in the earlier stage of installation of solar lights by the Panchayats has compelled the State to take initiatives to put a check and balance to make the scheme successful for rural populace is one of the backdrop of issuance of letters issued by the Panchayati Raj Department is in no way eschewing rights of the Panchayat rather, responsibility has been directed to be shouldered collectively by all.

22. The apprehension of the petitioner that *vide* memo No. 7325 dated 29.07.2022, the Panchayats have been conferred with the power for grant of administrative sanction of the estimates prepared by the BREDA is only an act of post office giving seal to administrative sanction is wholly



misconceived as the power to grant always includes power to refuse, if the same suffers from any illegality or appears to be unjustified.

23. Further the submission of the petitioner that the fund of Gram Panchayat shall be utilized for implementation of Mukhyamantri Rural Solar Light Scheme has also no substance as under the 15th Finance Commission, the Centre has released the fund for the State of Bihar, which will be used for installation of solar light and for the said purpose 75% of the fund has to be transferred in the account of Gram Panchayat, which fund would be released only after administrative sanction of Gram Panchayat. Rest 25% of the fund, from the State Plan Fund is to be allocated to District Panchayati Raj Officer for payment to the executing agency.

24. This Court though finds the submission of the petitioner, merit consideration to the extent of certain restrictions, excessively imposed upon the Panchayats, such as, making the DPRO as Drawing and Disbursing Officer but the same cannot be said to be usurpation of the power of the Gram Panchayat, if the State taking note of earlier irregularities and pilferage of public money in course of earlier round of implementation of solar scheme, leading to complete failure,



has come out with putting some check and balance only to ensure the execution of the scheme meant for the Gram Panchayat itself.

25. Well settled it is that to ensure the rule of law, in all governmental activities, the Court has provided with the power of judicial review to put them within the limits of the Constitution. However, having gone through the impugned letter contained in memo No. 5465 dated 17.09.2021 entrusting the power to WIMC for selecting location and further vesting the power to BREDA for selection of service providers for different districts, as also the management of the funds do not suffer from any vice arbitrariness and illegality. That apart, this Court further finds the action of the respondents, in carrying out the development scheme (installation of Solar Light Scheme) is in conformity with the amended provisions of the Amendment Act, 17 of 2017.

26. No case of interference is made out.

27. The writ petition stands dismissed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	12.09.2023
Uploading Date	06.11.2023
Transmission Date	N.A.

