

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3253 of 2015

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Md. Nasim S/o Md. Sultan, resident of village- Darniya, P.O.- Mehrganj,
P.S.- Bahadurganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Vikash Bhawan, New Secretariat, Patna
2. The Principal Secretary, Panchayati Raj Department, Bihar, Vikash Bhawan, New Secretariat, Patna
3. The Joint Director (Election), Panchayati Raj Department, Bihar, Patna
4. The District Magistrate, Kishanganj
5. The SDM, Kishanganj, Bihar
6. The District Panchayat Raj Officer, Kishanganj, Bihar, Patna
7. The Director, Panchayati Raj Department, Bihar, Patna
8. The Assistant Director, Panchayati Raj Department, Government of Bihar, Patna
9. The State Election Commission through its Secretary, Sone Bhawan, Birchand Patel Path, Patna
10. The State Election Commissioner, State Election Commission, Sone Bhawan, Birchand Patel Path, Patna
11. The Secretary, State Election Commission, Sone Bhawan, Birchand Patel Path, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate

For the Respondents 9-11: Mr. Amit Shrivastava, Advocate

Mr. Girish Pandey, Advocate

For the Respondent/s : Mr. Roy Shivajee Nath, AAG-3

Mr. Rajesh Kumar, A.C. to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 08-10-2015 Heard Mr. Binod Kumar Singh, learned counsel for the petitioner, Mr. Rajesh Kumar, Assisting Counsel to AAG-3 for the State and counsel for the State Election Commission.

The petitioner is the Up-Pramukh of Gram Panchayat Raj Deshiya Toli, Block-Bahadurganj in the district of Kishanganj and is aggrieved by the order dated 30.7.2014 passed by the

Principal Secretary, Panchayati Raj Department, Patna in exercise of powers vested under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') whereby the petitioner has been removed from the post of Up-Pramukh.

Mr. Singh, learned counsel appearing on behalf of the petitioner with reference to an order of this Court passed in CWJC No. 15632 of 2014 has submitted that for the reasons that the said writ petition was allowed by this Court, the same grounds are also available to the present petitioner inasmuch as even in the present case it is the Director, Panchayati Raj who has conducted the proceedings and on which basis the order has been passed by the Principal Secretary which is impugned in the writ petition.

A counter affidavit has been filed on behalf of the Panchayati Raj Department and in paragraph-6 onwards the respondent practically admit this error while referring to a Division Bench judgment of this Court passed in L.P.A. No. 753 of 2013 (Annexure-A). In paragraph-9 of the counter affidavit it is admitted that the opinion of the Division Bench was gathered by the Department after passing of the impugned order and which order of the Division Bench also grants liberty to move afresh hence the case of the petitioner is required to be considered afresh. But since the matter was *sub judice* before this Court hence no

decision has been taken.

In view of the admission made by the respondents having realized the incurable defect present in the impugned order dated 30.7.2014 passed by the Principal Secretary, Panchayati Raj Department whereby the petitioner has been removed from the post of Up-Pramukh, the same cannot be allowed to continue and is accordingly set aside. Since it is on the issue of violation of statutory procedure that the order has been set aside, hence the respondent Principal Secretary, Panchayati Raj Department would be at liberty to move afresh against the petitioner but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

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