

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14755 of 2012

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1. Munna Kumar Son Of Sri Ramchari Resident Of Village Karari Piparia, P.S. Piparia, District Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Rural Development Department, Government Of Bihar, Patna
2. The Deputy Secretary, Rural Development Department, Government Of Bihar, Patna
3. The Joint Secretary, Vigilance Department, Government Of Bihar, Suchna Bhawan, Patna
4. The District Magistrate-Cum-District Programme Co-Ordinator, Manrega, Lakhisarai
5. Programme Officer, Piparia Block, District Lakhisarai
6. Project Director (Dpap), Rural Development Department, Government Of Bihar, Patna
7. Sri Mohan Bhagat, Mukhia, Piparia Gram Panchayat, P.S. Piparia, District Lakhisarai
8. Sri Bhola Mahto, Panchayat Secretary, Piparia Gram Panchayat, P.S. Piparia, District Lakhisarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHAILENDRA KUMAR SINHA

For the Respondent/s : Mr. MANIKANT MISHRA GP25

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 21-12-2015

Heard Mr. Shailendra Kumar Sinha for the petitioner and

Mrs. Neelam Prasad, A.C. to G.P. 25 for the State.

Petitioner is the resident of the village which constitutes Piparia Gram Panchayat in the district of Lakhisarai. The writ application seeks a direction upon the competent/appropriate authority of the State Government to consider and remove the Respondent no. 7 (Mukhiya) and Respondent no. 8 (Panchayat Secretary) from their post(s) against whom there is/are serious charges of misappropriation of government fund/money in the MANREGA scheme. It is stated



that on account of such financial irregularities committed by them Piparia P.S. Case No. 8 of 2012 has already been registered under Sections 409, 419 and 420/34 of the Indian Penal Code. An enquiry into their misconduct was also conducted by the Department of Rural Development in which the financial misconduct has been established. Still, those respondents have not been removed inasmuch as no consideration to this effect has been made by the appropriate/competent authority.

Section 18(5) of the Bihar Panchayat Raj Act, 2008 (for short 'the Act') reads as under:-

“Section 18(5). Without prejudice to the provisions under this Act, if, in opinion of the Commissioner having territorial jurisdiction over the Gram Panchayat, a Mukhiya or an Up-Mukhiya of Gram Panchayat absents himself without sufficient cause for more than three consecutive meetings of the sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the [Government] may, after giving the Mukhiya or Up-Mukhiya a reasonable opportunity for explanation, by order, remove such Mukhiya or Up-Mukhiya, as the case may be, from office.

[The Mukhiya or Up-Mukhiya so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies till further five years from the date of such removal. The Mukhiya or Up-Mukhiya so removed on rest of the charges shall not be eligible for re-election as Mukhiya or Up-Mukhiya or Member of Gram Panchayat during the remaining

term of office of such Gram Panchayat].

The stand of the State respondents is that until conviction is recorded by the Trial Court in the pending criminal proceeding, the State respondents may not examine the case of the petitioner for removal.

Mr. Sinha has submitted on the basis of the provisions of law (extracted hereinabove) that independent of criminal proceeding, the competent/appropriate authority can consider as to whether the respondent nos. 7 and 8 are fit to be retained as Mukhiya/Panchayat Secretary in view of the report *prima facie* which found them guilty of having committed financial irregularities.

Without opining any view on the stand of the petitioner, this Court disposes of the application by directing the government in the appropriate department to examine afresh the diverse materials collected against those respondents with a view to consider as to whether they justify for their removal from the post(s) in accord with the provision contained in Section 18(5) of the Act. The respondents shall place entire matter before the said respondent of the Government for consideration and disposal in accordance with law as quickly as possible preferably within eight weeks from today.

(Kishore Kumar Mandal, J)

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