

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9169 of 2014

With
Interlocutory Application No. 9169 of 2014

1. Sumta Shahi Wife of Sri Ajit Sharma Resident of village Arpa, P.O. Kaliyachak,
P.S. Hilsa, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Panchayati Raj Deptt. Govt. of Bihar, Patna.
3. The Secretary, State Election commission, Bihar, Patna.
4. The District Magistrate Cum-Collector, Nalanda at Biharsharif.
5. The Deputy Development Commissioner, Nalanda at Biharsharif.
6. The Secretary, Rural Development Deptt. Govt. of Bihar, Patna.
7. The Director, Panchayati Raj Deptt. Govt. of Bihar, Patna.
8. The Joint Director, Panchayati Raj Deptt. Govt. of Bihar, Patna.
9. The Programme Officer, Hilsa, District Nalanda.
10. Sub-Divisional Officer-cum-Certificate Officer, Hilsa, District - Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s :	Mr. Udit Narayan Singh, Adv. Mr. Gajendra Kumar Singh, Adv. Mr. Radha Krishna Singh, Adv.
For the Respondent-State :	Mr. Anshuman Singh, G.P.24 with Mr. Sidharth Shankar Pandey, A.C. to G.P. 24 Mr. Sri Ram Krishna, Adv.
For the Respondent-S.E.C.:	Mr. Amit Srivastava, Adv. Mr. Girish Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-01-2015

Heard Mr. Udit Narayan Singh learned counsel for the petitioner, Mr. Sidharth Shankar Pandey, A.C. to G.P.24 and learned counsel for the State Election Commission.

The petitioner an elected Mukhiya of Gram Panchayat Raj Harpura in the District of Nalanda is aggrieved by the order dated 28.2.2014 passed by the Principal Secretary, Panchayati Raj

Department, Government of Bihar whereby the petitioner has been removed from the post of Mukhiya in exercise of power vested under Section 18(5) of the Bihar Panchayati Raj Act, 2006 (hereinafter referred to as 'the Act').

Facts of the case briefly stated is that a decision was taken at the level of the Commissioner of the Division on 17.4.2012 for effective implementation of Mahatma Gandhi National Rural Development Employment Programme (hereinafter referred to as 'the MANREGA') and to undertake large scale plantations in the different Panchayats, placed at Annexure-1 and which was circulated by the District Magistrate in the Panchayats which is manifest from the ordersheet of the Gram Panchayat, Arpa dated 7.6.2012 placed at Annexure-2.

The matter was discussed in the Gram Sabha and an estimate was prepared for implementation of the Scheme which was duly approved by the Junior Engineer, the Executive Engineer and the Programme Officer. In so far as the Arpa Panchayat is concerned, initially the plantations were undertaken in 115 units which was increased subsequently to 188 units and in each of such units, 200 plantations took place. It is not in dispute that the petitioner purchased these plants from the local nursery and also installed hand pumps for its up keep but a large number of plants did not survive and



even some of the hand pumps were not found in working condition. In between the District Magistrate as the Chairman of the Programme issued guidelines on 14.8.2012 which was circulated vide Memo No. 2595 dated 31.8.2012 in all Panchayats and all the authorities in the district, a copy of which is placed at Annexure-3 and under which the authorities connected with the implementation of the Scheme of plantation undertaken under MANREGA were to purchase the plants from the Government Nursery.

It is the case of the petitioner that the circular dated 31.8.2012 was received in the Panchayat belatedly and by such time the plantations had already taken place. It is stated that it is when a demand was made by the petitioner for release of funds for making payment to the 'Van Posaks' who were appointed for upkeep of the plants, that the work done by the Panchayat was reviewed and following an inspection made by the Director, District Rural Development Agency and the report submitted by him that the Deputy Development Commissioner, Nalanda served a show cause notice on the petitioner vide letter dated 20.4.2013 charging him with eight irregularities.

The sum and substance of the allegation is that the plants sowed by the petitioner were not of good quality nor had they been purchased from the Government nursery rather was purchased at a

higher price from private nursery causing financial loss to the government and even the hand pumps installed were not found in working condition.

The petitioner was also charged with non maintenance of records relatable to the Schemes and all of which reflected financial irregularities and misconduct on the part of the petitioner warranting removal under Section 18(5) of the Act. A copy of the show cause is placed at Annexure 4 to the writ petition and which was responded to by the petitioner vide reply filed on 27.4.2013 placed at Annexure-5. It was mentioned by him that he had purchased 37, 600/- plants from the local nursery at a cost of Rs. 11,28,000/- and of which he had made payment of Rs. 5 lacs while a sum of Rs. 6,28,000/- remained pending for want of fund. It was further clarified by the petitioner that on 30.7.2012 she had already completed plantations in 188 units under the Scheme of 2012. It was further mentioned that a sum of Rs. 8,32,000/- had been paid for installing 33 hand pumps and steps were being taken for installing pumps in other places also. It was clarified that the Panchayat was maintaining 89 records relatable to the Scheme but of which only 8 had been inspected by the Director. As regarding the charge of purchase of plants from the local nursery it was clarified that since the work of plantation was already completed by the time the guidelines dated 31.8.2012 was received,

hence there was no case of violation. As regarding non payment to the labourers and 'Van Posak', it was stated that the same could not be done in absence of fund. On the issue of missing signboard from the places where the work under the Scheme had been carried out it was clarified that it was the handy work of mischievous elements.

The Deputy Development Commissioner not being satisfied by the explanation given by the petitioner vide memo No. 1256 dated 6.5.2013 as contained in Annexure-6 recommended for her removal under Section 18(5) of the Act and the District Magistrate, Nalanda followed suit when he submitted the records to the Director, Panchayat Raj, Patna along with his comments on 18.5.2013, a copy of which is placed at Annexure-A to the counter affidavit. The matter was considered by the Principal Secretary in the light of the materials on record and though initially the Principal Secretary called for a second report from the District Magistrate, in the light of the explanations given by the petitioner but upon perusal of the second report submitted by the District Magistrate, Nalanda and not finding substance in the explanation given by the petitioner that the Principal Secretary, Panchayat Raj Department charging the petitioner of misappropriation of Government money as well as of misconduct in discharge of the statutory duties, has ordered for her removal under Section 18(5) of the Act and being aggrieved the petitioner is before

this Court.

Mr. Udit Narayan Singh learned counsel for the petitioner has straight away referred to an enquiry report submitted by 15 member team constituted under the leadership of the Special Work Officer, Rural Development Department, Government of Bihar, Patna dated 17.10.2013 placed at Annexure-9 to submit that a plain reading of the report submitted by the team is sufficient to exonerate the petitioner of all accusations. It is submitted that even where a specific pleading to this effect has been made in the writ petition which encloses at Annexure-9, the enquiry report, yet the State while filing the counter affidavit has conveniently omitted to respond to the same. It is the contention of Mr. Singh appearing for the petitioner that the said enquiry report was placed before the Principal Secretary at the time of hearing but he has failed to take note of the same and with reference to paragraph 24 of the writ petition he submits that a statement to such effect has not been responded to by the State in their counter affidavit.

Mr. Singh learned counsel for the petitioner with reference to the show cause reply to the petitioner and the enquiry report placed at Annexure-9 has submitted that whereas in the first place the allegations are not such which warranted a removal of the petitioner and more so in absence of any categorical finding regarding a misappropriation of Government fund by the petitioner rather merely

on account of non functional hand pumps or on grounds that the plants were not of good quality and did not survive that the petitioner has been removed.

The arguments of Mr. Singh has been contested by learned counsel for the State to submit that the allegations facing the petitioner are rather serious and since admittedly the plants were purchased at a higher price and large numbers did not survive or were found not up to mark in quality, it reflected a misuse of Government funds and a financial irregularity which constituted a misconduct on the part of the petitioner. Learned counsel has read through the allegations in support of his submission that the order did not require any interference.

I have heard learned counsel for the parties and I have perused the materials on record.

The allegations facing the petitioner are enumerated in the show cause notice placed at Annexure-4 and are follows:

- (a) The plantations have been carried out in irregular manner and without giving consideration to the quality or its up keep and as a result most of the plants have not survived.
- (b) Although a sum of Rs. 8, 32,400/- has been paid to M/s Sujit Hardware for installation of hand pumps but they have not been installed in sufficient numbers.

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- (c) Although to carry out the Scheme, the Panchayat had to maintain 89 records but only 8 were presented for inspection and thus the Government money has been withdrawn without proper records.
- (d) Vide letter No. 2595 dated 31.8.2012 the Panchayat were to purchase plants only from the Government Nursery at Rs. 3 per plant but the petitioner had purchased the plants at the rate of Rs. 30/- per plant from private nursery ignoring the directives and thus has caused loss of Rs. 9,15,000/-.
- (e) The records maintained by the Panchayat showed that the amounts had not been paid according to the Scheme rather there is irregularity in maintenance of accounts.
- (f) The Van Posak has not been paid since last 3 to 4 months.
- (g) The Signboard are missing from the appropriate place nor the Schemes have been demarked. The Van Posak has not been appointed unit wise rather the Mukhiya has appointed Van Posak by amalgamating several units.

A plain reading of the accusations at best would reflect an irregularity in the functioning of the Mukhiya in carrying out the purposes of the Scheme but the allegations in no manner reflects any misappropriation of Government funds by the petitioner. The explanation given by the petitioner response to each of the allegations

clarifying the position has been given a go bye and even the report of the 15 member committee which is placed at Annexure 9, has not been responded to by the State. A removal of an elected representative is a very serious matter and has to be done with due care and caution and certainly not in a routine manner.

A reading of Section 18(5) of the Act reflects that it is only in certain circumstances conceived in the provision itself that such extreme step can be taken by the Principal Secretary and which are; if:

(a) the Mukhiya absent himself without sufficient cause for more than three consecutive meetings or sitting of the Panchayat; or

(b) willful omits or refuses to perform his duties and functions under this Act; or

(c) abuses the power vested in him or is found to be guilty of misconduct in the discharge of duties; or

(d) becomes physically or mentally incapacitated for performing his duties; or

(e) is absconding being an accused in a criminal case for more than 6 months.

The provision very clearly spells out the circumstances in which an elected Mukhiya can be removed and a cursory glance of the circumstances would make it clear that at best the petitioner can be charged under Clauses (b) or (c), for the other clauses do not apply.



The issue is whether the petitioner has willfully failed to perform his duty or has refused to do so. The answer is in the negative, for there is no such directions which were issued to the petitioner and he has refused to do so. As regarding non compliance of the directives of the District Magistrate as contained in the guidelines bearing No. 2595 dated 31.8.2012 is concerned, the petitioner has given her explanation and which has not been found incorrect. The other circumstance is whether the petitioner has abused her powers and thus is guilty of misconduct. The records reflect that a decision to implement the Scheme was taken as back as on 15.6.2012 and a decision within the Panchayat was taken on 7.6.2012, as is evident from the Annexures 1 and 2 respectively. The decision of the District Magistrate, Nalanda as contained in the letter No. 2595 dated 31.8.2012 placed at Annexure-3 was circulated almost 3 months of the decision taken by the Panchayat in question. It is the stand taken by the petitioner that much before the directions were received in the Panchayat, she had already purchased the plants from the local nursery at the lowest possible price which estimate was duly approved by the Gram Sabha as well as the Assistant Engineer, the Executive Engineer and the District Programme Officer. A decision thus was taken at the Gram Sabha and was duly approved by the three Member Committee and whereafter the Scheme was implemented. It



is not the allegation of the State that the plants were never purchased by the petitioner or that she had misappropriated the Government fund without carrying out the purpose for which it was withdrawn. The allegation against the petitioner is of over spending; of not following the directives of the District authorities and not taking care as to the quality of the plants as well as in its maintenance.

In the opinion of this Court, the petitioner as per her prudence has carried out the Scheme which may not have worked as per the expectation of the District Magistrate but its failure in some parts does not in any manner reflect of the misconduct on the part of the petitioner so as to warrant her removal. That the Scheme's implementation had the approval of the Gram Sabha as well as the Assistant Engineer, Executive Engineer and the District Programme Officer, shows that it was a collective decision.

As I have observed, a removal of an elected representative has to be in extreme circumstances and unless the authorities are convinced that his/her continuation on the post would be a stigma attached, it is not to be passed in a casual manner. For my opinion I would to rely upon paragraph 11 of the judgment of the Supreme Court rendered in the case of **Tarlochan Dev Sharma reported in (2001) 6 SCC 260** is as follows:

“11. The expression “abuse of powers” in the context and setting in which it has been used cannot mean use of

power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise or power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is “abuse of his powers or of habitual failure to perform his duties”. The use of plural- powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase “abuse of powers” must take colour from the next following expression- “or habitual failure to perform duties”. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is “abuse of powers” within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exist for a single innocuous action or error of decision.”

The judgment of the Supreme Court rendered in the case of **Ravi Yashwant Bhoir** reported in (2012) 4 SCC 407 particularly, paragraphs 63 and 66 thereof lay further guidelines on the issue:

“63. Merely not to conduct oneself according to the procedure prescribed or omission to conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some positive intentional misconduct is shown.

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“66. So far as the other charges regarding laying down the pipelines at a much higher rate are concerned, it has been a positive case of the appellant that as the earlier contractor had abandoned the work in between and there was a

scarcity of water in the city, the Chief Officer, the Junior Engineer considered the technical aspect and then recommendations were forwarded under the signature of the appellant, the Chief Officer and Junior Engineer to the Council, which ultimately passed the resolution accepting the said tenders. In such a fact situation, it was a collective consensus decision of the House after due deliberations. Admittedly, it was not even the ratification of contract awarded by the appellant himself. Thus, even by any stretch of imagination it cannot be held to be an individual decision of the appellant and the competent authority failed to appreciate that the tenders were accepted by the Council itself and not by the appellant alone. Therefore, he could not be held responsible for acceptance of tenders.”

In view of the circumstances where the decision taken is a collective decision; that there is no evidence of misappropriation by the petitioner; where admittedly steps have been taken to implement the Scheme; where the committee constituted by the Minister concerned did not find any irregularity; a mere irregularity in implementation of the Scheme certainly cannot be termed an abuse of power or to constitute a misconduct. The order of removal is a perverse decision and cannot be upheld.

In result, the order passed by the Principal Secretary dated 28.2.2014 placed at Annexure-7 is set aside and the petitioner is restored to the post of Mukhiya.

The writ petition is allowed. The interlocutory application is accordingly disposed of.

(Jyoti Saran, J)

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