

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22488 of 2013

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Pramod Thakur S/O Late Bharoshi Thakur, resident of village + P.O- Pathra, P.S-
Barhat, Distric- Banka.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
3. The District Magistrate, Banka.
4. The District Panchayat Raj Officer, Banka.
5. The Block Development Officer, Barhat, Banka.
6. The State Election Commission, Represented Through Its Secretary, State
Election Commission, Bihar, Sone Bhawan 3rd Veer Chand Patel Path, Patna-
800001.
7. Shri Vishwanath Sah S/O Late Mahesh Sah, resident of Village + PO-Pathra,
P.S- Barhat, District- Banka.
8. Md. Perwez Ansari S/o Md. Salauddin Ansari, resident of village-Labokhar, P.S.
& P.O.-Barahat, District-Banka.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Manohar Prasad, Advocate
Mr. Sri Prakash Srivastava, Adv.
For the Respondent/s : Mr. Kumar Sachin, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-01-2015

Heard Mr. Manohar Prasad for the petitioner, Mr.

Parmeshwar Vishwakarma, Assisting counsel to G.P. 28 for the State,

Mr. Girish Pandey for the State Election Commission and Mr. Shiv

Kumar Prabhakar for the respondent nos. 7 and 8.

The petitioner has questioned the order dated 30.9.2013 bearing Memo No. 181 of the Principal Secretary, Panchyati Raj Department, Government of Bihar whereby the petitioner stands removed from the post of Mukhiya in exercise of power vested under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (herinafter



referred to as 'the Act'). The petitioner is an Ex-Mukhiya of Gram Panchayat Raj Pathra in the district of Banka. Charging him with alleged irregularity while functioning as a Mukhiya, that an application was filed before the Principal Secretary, Panchayati Raj Department by the respondent no. 7 herein and since no steps were taken by the Principal Secretary for disposal of the complaint, that he moved this Court in CWJC No. 3066 of 2013. The writ petition was disposed of vide order passed on 24.8.2012 with the direction to the Principal Secretary, Panchayati Raj Department, Government of Bihar to dispose of the complaint within a reasonable time, not exceeding three months from the date of receipt / production of the copy of the order passed by this Court. The order of this Court is placed at Annexure-1 to the writ petition. Pursuant to the order passed by this Court that on directions, the matter was enquired into by the District Magistrate, Banka who submitted his report on 30.4.2013 containing recommendations for removal of the petitioner under Section 18(5) of the Act *inter alia* on four counts:

- (a) The working of the petitioner was influenced by anti social elements and middlemen.
- (b) The committees to be constituted under Section 25 of the Act had been constituted by the petitioner on his whims and fancy and in most of the committees he had appointed himself as the Chairman.
- (c) The distribution of scholarship to backward class

students was being done in whimsical manner.

- (d) The petitioner was not holding meetings of the Panchayat at regular intervals.

The District Magistrate while submitting his report had also mentioned that of the six charges leveled against the petitioner, two of the charges were without any basis. The Principal Secretary taking note of the statutory provisions of Section 25 of the Bihar Panchayat Raj Act which mandated a constitution of six committees for efficient functioning of the Panchayat, and also taking note of the fact that petitioner had taken no steps to constitute committees as per the statutory provisions, afforded him one opportunity to correct himself and the hearing was adjourned to 29.5.2013.

Mr. Manohar Prasad, learned counsel appearing on behalf of the petitioner with reference to a letter of the petitioner addressed to the Joint Director-cum-Joint Secretary, Panchayati Raj Department as contained in Annexure-5 has submitted that pursuant to the opportunity granted by the Principal Secretary, the petitioner constituted two more committees i.e. the Planning, Co-ordination and the Finance Committee and the Public Development Committee in addition to three committees constituted earlier, namely, Production Committee, Social Justice Committee and the Sukh Suvida Committee and thus had substantially complied with the directions. The Principal Secretary taking note of the fact that despite opportunity

having been afforded to the petitioner to correct his mistake and constitute the committees in tune with the statutory provisions of Section 25, he did not rectify the mistake, that he has proceeded to pass the impugned order.

Mr. Prasad, learned counsel for the petitioner with reference to a decision of this Court dated 18.12.2014 arising from CWJC No. 9576 of 2014 has submitted that the foundation for the impugned order lies on the non-constitution of the committees in tune with Section 25 of the Act and which can at best be called an irregularity but is not sufficient to conclude in a removal of an elected representative.

I have heard learned counsel for the parties and I have perused the materials on record. The provisions of Section 18(5) of the Act vests power in the Principal Secretary to order for removal of the Mukhiya in certain circumstances which finds discussion in the provisions and are as follows:

- (a) Where the Mukhiya absents himself without sufficient cause on more than three consecutive meetings or sittings; or
- (b) Willfully refuses to perform his duties and functions under the Act;
- (c) Abuses the power vested in him or is found guilty of misconduct or abuses the power in him; or
- (d) Is found guilty of misconduct in discharge of his

duties ; or

- (e) Becomes physically or mentally incapacitated in performing his duties; or
- (f) Is absconding being an accused in criminal case for more than six months.

The petitioner was elected in an election held in 2011 and the proceedings were drawn two years thereafter in the year 2013 following a direction by this Court vide order as contained in Annexure-1. The committees discussed in Section 25 of the Act and its constitution are not ornamental in nature rather the committees have been designed for efficient functioning of the Panchayat and it was a legal obligation cast upon the petitioner to have constituted the committees in the manner prescribed. The order of the Principal Secretary reflects that believing the petitioner of not being versed with the statutory provisions that an opportunity was provided to him for correcting himself and to constitute the committees afresh in tune with Section 25 of the Act but the opportunity was not availed of. The letter of the petitioner as contained in Annexure-5 relied upon by learned counsel for the petitioner demonstrates that the petitioner was not willing to correct himself and even when opportunity was given to him by the Principal Secretary to constitute the committees as per the statutory provision, the petitioner in purported compliance has

constituted only two committees which are statutory in nature and for the rest of the committees, he again relies upon the earlier committees constituted by him which were not found to be in tune with the statutory provisions. It was a clear case of defiance on the part of the petitioner in not correcting himself falling well within category (b) above and in the circumstances the order passed by the Principal Secretary cannot be faulted with.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

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