

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15632 of 2014

With

Interlocutory Application No. 7817 of 2014

With

Interlocutory Application No. 9061 of 2014

With

Interlocutory Application No. 226 of 2015

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1. Md. Anwar Alam S/o Late Hafizuddin R/o Village - Deshiya Toli, P.S. - Bahadurganj, District - Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayat Raj Department, Bihar, Patna.
2. The Joint Director (Election), Panchayat Raj Department, Bihar, Patna.
3. District Magistrate, Kishanganj.
4. Zila Panchayat Raj Department, Bihar, Patna.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Parth Sarthi, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 05-02-2015 Heard Mr. Binod Kumar Singh, learned counsel for the petitioner and Mr. Mrigendra Kumar A.C. to G.A.11 for the State.

The petitioner a sitting Mukhiya of Gram Panchayat Raj, Deshiya Toli, Bahadurganj in the District Kishangaj stands removed under the orders of the Principal Secretary, Panchayati Raj Department bearing Memo No. 5373 dated 30.7.2014 placed at Annexure-14 to the writ petition.

Although the order of removal is sought to be challenged on merits as well as on grounds of statutory violation but in view of

the procedural violation complained of by the petitioner which is apparent from the order itself, this Court would not be required to enter into the merits of the allegations at this stage.

Mr. Binod Singh learned counsel for the petitioner has with reference to the statutory provisions underlying Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') argued that whereas the legislature under the amendment Act 8 of 2008 has cast a statutory obligation upon the State Government meaning thereby the Principal Secretary, Panchayati Raj Department, to pass any order of removal after giving reasonable opportunity of hearing to the concerned Mukhiya or Up-Mukhiya but in so far as the present case is concerned, the Principal Secretary has abdicated this responsibility in favour of the Director, Panchayati Raj as is manifest from his order in which he has admitted that the petitioner was directed to appear before the Director, Panchayati Raj Department on the date fixed for hearing.

It is considering such submissions that learned State counsel were directed to produce the records and meet the submissions but the records also do not come to any aid of the respondents rather manifests that it is the Director, Panchayati Raj who has conducted the hearing albeit the order has been passed by the Principal

Secretary. This is not the intendment of statutory provisions and when the legislature has vested powers of removal in the Principal Secretary of the Department and has also laid down the modalities then it has to be strictly followed and there is no short cut to such exercise for the provision no where provides for delegation of such responsibility. This defect is incurable rendering the order illegal and for the same reasons, the order bearing Memo No. 5373 dated 30.7.2014 passed by the Principal Secretary, Panchayati Raj Department as contained in Annexure-14 cannot be upheld and is set aside. The matter is remitted back to the Principal Secretary for consideration of the matter and its disposal afresh and in accordance with the statutory provisions underlying Section 18(5) of the Act and after giving opportunity of hearing to the petitioner. As a consequence the petitioner stands restored to its position as Mukhiya of the Gram Panchayat.

The petitioner shall appear before the Principal Secretary, Panchayati Raj Department along with copy of this order on/or before 12.2.2014 when he shall fix a date for hearing of the matter and its disposal in the light of the statutory stipulations.

The writ petition is allowed. The Interlocutory application stands disposed of.

Bibhash/-

(Jyoti Saran, J)

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