

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11998 of 2014

With

Interlocutory Application No. 7232 of 2014

With

Interlocutory Application No. 1349 of 2015

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1. Sanjay Thakur son of Sri Nageshwar Thakur Resident of village and
P.O. Hathiawan, P.S. Sheikhpura, District - Sheikhpura

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar,
Patna
2. The Principal Secretary, Panchayati Raj Department, Government of
Bihar, Patna
3. The Director, Panchayati Raj Department, Government of Bihar, Patna
4. The Joint Director (Election) Panchayati Raj Department, Government
of Bihar, Patna
5. The District Magistrate, Sheikhpura, District - Sheikhpura
6. The District Panchayat Raj Officer, Sheikhpura, District - Sheikhpura
7. The Deputy Development Commissioner, Sheikhpura, District -
Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.

For the Respondent/s : Mr. Pravin Kumar Verma A. C. to S.C.26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

3 18-02-2015 Heard Mr. S.B.K. Mangalam, learned counsel for the

petitioner, Mr. Pravin Kumar Verma A. C. to S.C. 26 for the State

and Mr. Arun Kumar for the intervenor who has suo motu entered

appearance.

The petitioner stands removed from the post of Mukhiya,

Gram Panchayat Raj, Hathiawan in the District of Sheikhpura

under the orders of the Principal Secretary bearing Memo No.

4607 dated 1.7.2014, a copy of which is present at Annexure-13 to

the writ petition. The petitioner has been charged with misconduct and abuse of official position as well as insubordination in the matter of discharge of his duties as a Mukhiya as well as in the implementation of the Schemes in the Gram Panchayat.

The sum and substance of allegation revolves around the installation of solar lights under the Scheme of the Govt. No less than 12 charges have been set up against the petitioner and which has been responded to by him and the Principal Secretary by the impugned order not being satisfied has ordered for his removal under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') and being aggrieved the petitioner is before this Court.

Mr. Mangalam learned counsel for the petitioner has submitted that of the 12 charges whereas the Principal Secretary being satisfied by the explanation given by the petitioner against Charge No. 4, 6 and 10 has merely endorsed the other charges on the report of the District Magistrate and without assigning any reasons for non acceptance of the explanation given by the petitioner, has ordered for removal. He submits that the order passed is mechanical in nature and suffers from complete non application of mind.

The arguments of Mr. Mangalam has been contested by Mr.

Verma appearing for the State as well as Mr. Arun Kumar who has registered suo motu appearance claiming to be one of the complainants to the initiation of the proceedings and it is strenuously argued that since there had been large scale irregularities in the implementation of the Scheme by the petitioner hence the order requires no interference.

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

In my opinion the three charges levelled against the petitioner i.e. Charge nos. 4, 6 and 10 were of serious nature and I find that the explanation advanced by the petitioner was accepted and these charges were dropped.

Whereas charge No. 4 accuses the petitioner of having entering into agreement for maintenance of the solar lights for two years after paying a maintenance charges for three years, charge No. 6 reflects upon the quality of the solar lights and Charge No. 10 accuses the petitioner of making payment of a higher price to the supplier. These three accusations which were of serious nature involving financial obligations have been dropped by the Principal Secretary while accepting the explanation.

In my opinion the other accusations are a mere allegations of procedural irregularities in implementation of the Scheme and



whereas in response to some of the accusations the petitioner has fairly accepted the same as a human error, in respect of the others, the defect has been removed but in either of the cases, the response and the action taken has been treated to be an admission of guilt. The order of the Principal Secretary is perfunctory for it does not give any reasons for rejecting the explanation of the petitioner as against those 9 accusations. In fact, charge No. 12 is mere ornamental for it makes no reference to the materials which constitute such accusations except for relying upon a report of the Deputy Development Commissioner.

Dealing with the charges individually it is noticed that charge No. 1 accuses the petitioner of implementing the Schemes on whims and fancies. In response thereto the petitioner while admitting to non mentioning of the name of the Scheme has stated that each of such Scheme was implemented after being approved by the Gram Sabha and by the District Planning Committee.

Charge No. 2 is related to installation of a low power battery and although the said aspect has been denied by the petitioner but the opinion of the District Magistrate against the said charge reflects that the supplier had replaced the battery.

Charge No. 3 accuses the petitioner of using a sub standard pole for installation of light which has been denied by the

petitioner and the opinion of the District Magistrate reflects that since it was not properly installed necessary steps were taken by the petitioner for its proper installation.

Charge No. 4 stands dropped and Charge No. 5 merely speaks about implementation of Schemes on places other than earmarked. The petitioner while admitting that in some places the lights have been installed on different places denies any intentional default.

Charge No. 6 stands dropped and Charge No. 7 again speaks about installation of lights on places other than earmarked and which has again been denied by the petitioner. Charge No. 8 charges him with installation of lights in a village even in absence of any Scheme while installing three lights in village Kamat in place of one while not installing any lights in village Dharampur and village Rasalpur. This charge has again been denied by the petitioner and even the District Magistrate has sweepingly rejected the explanation.

Charge No. 9 accuses the petitioner of installing 13 lights in village Hathiawa though no Scheme had been approved in respect thereof and against which the petitioner has responded that it has been installed as per the approval of the Gram Sabha and the list of the beneficiaries of such installations were sent to the District

Planning Committee who though approved the list but mistakenly it has not been included in the annual Scheme. Charge No. 10 stands dropped and Charge No. 11 is again a matter relatable to installation.

The discussion made hereinabove leaves no room for confusion that it is on mere procedural irregularities in implementation of the Scheme that the order impugned has been passed even in absence of evidences which can support that these acts were unilateral or were backed by ill will and were taken for unjust gains. Although explanation to each of the charge have been given by the petitioner but no reasons has been assigned by the Principal Secretary for rejecting the explanation of the petitioner and upholding the accusations under Section 18(5) of the Act.

Though the legal position in this regard stands settled in the judgment of **Tarlochan Dev Sharma** reported in (2001) 6 SCC 260 para 11 and in the judgment of **(Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others)** reported in (2012) 4 SCC 407 wherein it stands settled that every form of irregularity by itself would not be sufficient to impute misconduct or abuse of powers unless there are circumstances and evidence to support and that where a decision is approved by the Gram Sabha, the

functional head cannot be individually held responsible but the judgments (supra) go unnoticed.

For the reasons aforementioned, the order bearing Memo No. 4607 dated 1.7.2014 passed by the Principal Secretary cannot be upheld and is accordingly set aside.

The writ petition is allowed. The petitioner stands restored to his position. The interlocutory applications stand disposed of.

The consequences shall follow.

(Jyoti Saran, J)

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