

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4218 of 2015

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1. Radha Devi , W/O- Sri Subhash Das, Resident of- Village- Maraiya,
P.S.- Parbatta; Distt.- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Gram Panchayat Raj, Government of Bihar, Patna.
2. The Principal Secretary, Department of Gram Panchayat Raj, Government of Bihar, Patna.
3. The Divisional Commissioner, Mungher.
4. The District Magistrate, Khagaria.
5. The District Panchayat Raj Officer, Khagaria.
6. The Block Development Officer, Block- Parbatta P.S.:- Parbatta, District:- Khagaria.
7. Md. Arbar Ahmad, S/O- Late Abdul Rahup, Resident of- Village- Maraiya, P.S.- Parbatta; Distt.- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prakritita Sharma, Adv.

For the Respondent/s : Mr. Sumant Kumar Singh, A.C. to GA-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 01-03-2016 The petitioner happens to be the Sarpanch of Gram Kutchary, Pipra Latif, Block Parbatta in the district of Khagaria and makes complaint against the Up-Sarpanch i.e. respondent No.7 in failing to discharge obligation cast upon him under the provisions of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'). According to the petitioner, the respondent No.7 fails to attend any meeting of the Gram Kutchary and by his act has incurred the disqualification under Section 97(5) of 'the Act'. Although some kind of representation has been filed by the petitioner which also has been acted upon as is reflected from the



affidavit filed by the Principal Secretary, Panchayati Raj Department himself but the same is not addressed to the authority concerned. This Court taking note of the nature of grievance as well as the prayer made in this application in the backdrop of the statutory provisions underlying Section 97(5) of 'the Act' had sought a response from the Principal Secretary, Panchayati Raj Department, as to whether there has been any delegation of powers since Section 97(5) of 'the Act' vests the power of removal in the State Government exclusively and Rules 5, 11, 21 and 22 of the Rules of Executive Business framed under Article 166(3) of the Constitution empowers the Minister Incharge for disposal of the business of the department concerned, with powers of delegation. A supplementary counter affidavit is filed by the Principal Secretary, Panchayati Raj Department being conscious of the responsibility so cast and the response so expected from him since the issue raised concerned a removal of an elected representative under the Panchayat Raj Act. The discussed response present in paragraphs 7 to 9 of the affidavit confirms that the power of removal of an elected representative under Sections 18(5), 44(4), 70(5) and 97(5) of 'the Act' vests with the Minister Incharge of the Panchayati Raj Department and has not been delegated to any other authority till date. He further proceeds to

inform this Court that it is looking into the acts of Up-Sarpanch that the District Magistrate, Khagaria has been directed to submit his report which is still wanting.

The legal position stands clear from the affidavit of the Principal Secretary, Panchayati Raj Department and in view of the stipulations underlying Sections 18(5), 44(4), 70(5) and 97(5) of 'the Act' where the power of removal of these elected representatives concerned under the Panchayat Raj Act exclusively vests in the State Government, meaning thereby the Minister, Panchayati Raj Department, in absence of any delegation of such powers to the Principal Secretary or any other authority, any such grievance can only be addressed upon by the aggrieved before the Minister Incharge. That the department themselves have undertaken an exercise to enquire into the affairs/ conduct of the Up-Sarpanch would not make any shift in the legal position.

In the circumstances so discussed above, the petitioner would be at liberty to raise her grievance before the authority concerned if so advised.

The writ petition is disposed of.

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(Jyoti Saran, J)