

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12899 of 2018

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Pramod Kumar son of Awadh Ram, Resident of village-
Nardidih, P.O. and P.S. Nardiganj, District- Nawada, Presently
Mukhiya of Gram Panchayat Raj, Hadiya, Block- Nardiganj,
District- Nawada.

... .. Petitioner

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 District Magistrate, Nawada, district – Nawada.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate
For the Respondent/s : Mr. Anwar Karim, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 25-01-2019

Heard learned counsel for the petitioner and
learned counsel representing the State.

2. It appears that during pendency of the writ application final order under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the "Act of 2006) has been passed on 11.12.2018 vide Annexure-P/17 to



Interlocutory Application No. 174/2019. The said order has been challenged by the petitioner by filing the aforesaid Interlocutory Application.

3. Mr. S.B.K. Mangalam, learned counsel representing the petitioner has assailed the order dated 11.12.2018 on the following grounds: -

(1) That once the Hon'ble Division Bench of this court decided the writ application being CWJC No. 19591/2016 on 17.05.2017, there was no impediment in the way of the petitioner, who was Mukhiya of the Gram Panchayat, in proceeding with the implementation of the schemes namely, Saat Nischay Yojana;

(2) The petitioner has withdrawn money from the funds of the Panchayat only to give effect to the schemes and he has completed the work of all the 42 schemes. In support of this ground it is also stated that an inquiry as to whether the petitioner has completed the work or not was undertaken, but has not been finally concluded; and



(3) That in any view of the matter removal of the petitioner from the post of Mukhiya without there being any allegation of misappropriation against him would not be just and proper.

4. On the other hand, learned counsel representing the State submits that a bare perusal of the order dated 17.05.2017 passed in CWJC No. 19591/2016 would show that while quashing the scheme of the government introduced at that point of time by which the government had created a 'Ward Vikas Samiti' and the said 'Ward Vikas Samiti' was entrusted with the work, this court had granted liberty to the State Government to either get the schemes implemented through the Committees already functioning under the Act of 2006 or to take such steps as are permissible in law for implementing the scheme.

5. Learned counsel submits that only five days after the order dated 17.05.2017 was passed by the Hon'ble Division Bench of this court and while the State Government was still considering taking a decision in this regard, the petitioner started withdrawing money from the account w.e.f.



23.05.2017 and within a period 3 ½ months he had withdrawn a huge amount in lakhs of rupees.

6. Learned counsel for the State has also pointed out that the action under Section 18(5) of the Act of 2006 has been taken because the petitioner who was holding the post of Mukhiya had misconducted himself in terms of the aforesaid provision and had made himself liable to be proceeded against. It is also submitted that prior to passing of the order dated 11.12.2018 (Annexure-P/17), an opportunity of hearing was given to the petitioner and only after considering his reply and giving the same an anxious consideration when it was found that the petitioner is liable to be removed, the final order was passed.

7. Learned counsel further submits that the contention of the petitioner that he had implemented the scheme and had completed the work is disputed but it would not be relevant at this stage when it is apparent from his acts and deeds that within five days from the date of the judgment of the Hon'ble High court, without waiting for a decision of the government on the subject, he had on his own started



withdrawing money from the account and made payment directly to several parties/individuals.

8. It is submitted that even though the petitioner has contended the fact that he was carrying on work and the same was known to the Block Development Officer, it is not acceptable as there is no material on the record in form of an order of the Block Development Officer directing the petitioner to proceed with the implementation work of the scheme.

9. Having heard learned counsel for the parties and on perusal of the records, this court finds substance in the submission of learned counsel representing the State. It is apparent from the record that the Hon'ble Division Bench of this Court while disposing of CWJC No. 19591/2016, had given liberty to the State Government to either get the scheme implemented through the Committees already functioning under the Act of 2006 or to take such steps as are permissible in law for implementing the scheme. Thus the very manner in which government's schemes were to be implemented was to be decided by the government. The petitioner who was Mukhiya of the Gram Panchayat had no occasion to start



implementation of work under the scheme as is being claimed by him within a period of five days only from the date of disposal of the aforesaid writ application. There was no decision of the government in this regard.

10. The petitioner being the Mukhiya of the Gram Panchayat has apparently withdrawn money on his own in the name of the alleged implementation of the scheme which was not guided by the government's decision. The action under Section 18(5) of the Act of 2006 was undertaken in view of the aforesaid misconduct of the petitioner in withdrawing huge amount in the name of implementation of the scheme. A show cause notice was given to the petitioner and then on receipt of the reply of the petitioner, it was found that save and except his bald statement that the matter was well within the knowledge of the Block Development Officer, there was no material to support the same, the impugned decision has been taken by the government.

11. Mr. Mangalam, learned counsel for the petitioner, has also raised an issue at this stage that the power is conferred upon the Government to pass the order under



Section 18(5) of the Act of 2006, but in the present case, the proposal was sent by the Principal Secretary, Panchayat Raj Department, Government of Bihar which was approved at the Government's level, and, thus a correct procedure was not followed. This court does not find any substance in the aforesaid submission, as it is apparent from the impugned order that the same has been issued upon approval of the Government.

12. In the opinion of this court, impugned order being a well reasoned order, this court would not like to interfere with the same. The writ application has thus no merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
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