

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14443 of 2019

Pinku Kumar (M), aged about 39 years, Son of Nawal Kishore Singh, Resident of Village- Kemra, P.O. Diha, P.S. Ariyari, District- Sheikhpura, then Mukhiya of Gram Panchayat Raj- Ekrama, Block- Chewara, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The Deputy Secretary, Panchayat Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Sheikhpura.
5. The District Panchayat Raj Officer, Sheikhpura.
6. The Deputy Development Commissioner, Sheikhpura.
7. The Sub-Divisional Officer, Sheikhpura.
8. The Block Development Officer, Chewara, District- Sheikhpura.
9. Suresh Yadav, Son of Hari Nandan Yadav, Resident of Village- Rajaura, P.O. Ekrama, P.S. Ariyari, District- Sheikhpura, Presently UP- Mukhiya of Gram Panchayat Raj-Ekrama, Block- Chewara, District- Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P K Shahi, Sr. Advocate Mr. Amresh Kumar Sinha, Advocate
For the State	:	Mr. Prabhat Ranjan, AC to GP 6

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 16-01-2020

Heard Mr. P K Shahi, learned senior counsel for the petitioner and learned AC to GP 6 for the State.

2. The petitioner has moved the Court for the following reliefs:

“I. For issuance of appropriate writ in the nature of Certiorari for quashing the order dated



09.05.2019 passed by the Principal Secretary, Panchayati Raj Department, Bihar Patna (respondent no. 2) whereby and where under he has removed the petitioner from his post of Mukhiya, Ekrama Gram Panchayat, Chewara Block, District-Sheikhpura and also directed to constitute special team to do enquiry of implemented scheme done by the petitioner during his tenure period and after enquiry, if issue of misuse public money be proved then other legal action be taken as well as for recovery of misappropriated amount, auction letter case has to file against the petitioner and then Panchayat Secretary, Sri Umakant Kumar under provision of Bihar and Orisa People Demand Recovery Act, 1914.

II. For issuance of direction upon respondent authorities to reinstate the petitioner on his post as a Mukhiya, Ekrama Gram Panchayat, Chewara Block, District-Sheikhpura.

III. For declaration that power under Provision 18 (5) of the Gram Panchayat Act can only be invoked for removal under the said provision do exists and not on a ground which does not attract any of the circumstances as contemplated under the said provision of the Gram Panchayat Act.

IV. Also for any other relief/reliefs for which the petitioner is entitled in the eye of law.”

3. The grievance of the petitioner is that in a proceeding under Section 18(5) of the Bihar Panchayat Raj Act, 2006, he has been removed from the post of *Mukhiya* of Gram Panchayat Raj Ekrama in the district of Sheikhpura by order passed by the respondent no. 2 dated 09.05.2019.

4. Learned counsel for the petitioner made a very short point before the Court. It was submitted that the entire order of the respondent no. 2 dated 09.05.2019 is based on the report of the



District Magistrate, Sheikhpura contained in Letter No. 797 dated 24.12.2018, which, as has been admitted in the impugned order itself, was never served on the petitioner. Learned counsel submitted that in this background, though the respondent no. 2 has proceeded to comment on the show cause filed by the petitioner, but in effect, the same is meaningless as the issues which have been raised by the District Magistrate and findings given against him have been relied upon, of which the petitioner was totally unaware of. Learned counsel submitted that a public authority discharging a statutory duty of passing an order which has serious and punitive consequences on the person effected i.e., the petitioner, and that too, which in effect result in upturning the public mandate where the petitioner after facing an election had been elected to the post of Mukhiya, has been removed from the post in such a causal, perfunctory and patently illegal manner, which requires interference.

5. Learned counsel for the State submitted that the order has considered various aspects. However, on a specific query of the Court as to whether the report of the District Magistrate, Sheikhpura dated 24.12.2018 was ever served on the petitioner as also whether that is the basis of passing the impugned order



against the petitioner, learned counsel could not controvert the said from the order itself.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that on the short point of there being total violation of the principles of natural justice, the order impugned cannot be sustained.

7. The report of the District Magistrate, Sheikhpura, which is the backbone of the order impugned, and the same not having been served on the petitioner, coupled with the fact that the order does not disclose that any attempt was made or the said report was ever sent to the petitioner through any other mode, including through post, the natural presumption in law would be that the petitioner was never aware of such a report. Once this fact remains undisputed, any adverse order passed primarily on such report has to be held to be totally *ex parte* and that too, in violation of the principles of fair play and natural justice.

8. For reasons aforesaid, the application succeeds. The order impugned dated 09.05.2019, passed by the respondent no. 2, stands set aside. The matter is remanded to the respondent no. 2 for fresh consideration, in accordance with law, after giving reasonable opportunity of hearing to the petitioner. Since the



Court is conscious of the fact that repeatedly the petitioner also had been taking adjournments in the proceeding before the respondent no. 2, the Court would indicate that upon the petitioner not cooperating or seeking repeated adjournment, the respondent no. 2 shall be at liberty to proceed and pass final orders. However, before doing so, whatever material which may be available before the respondent no. 2, the same is required to be served on the petitioner, through a mode which is acceptable in law, and thereafter for response, a reasonable time has to be given.

(Ahsanuddin Amanullah, J.)

P. Kumar

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