IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23463 of 2019

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Pramod Prasad Chaurasiya Son of Ramvilas Chaurasia Resident of Village- Aroura, P.S.- Deo, District- Aurangabad.

... ... Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna.
2. The Commissioner Magadh Division, Gaya.
3. The District Magistrate, Aurangabad.
4. The District Panchayat Raj Officer, Aurangabad.
5. The Block Development Officer, Deo, Aurangabad.
6. The Assistant Engineer, Deo, Aurangabad.
7. The Junior Engineer, Deo, Aurangabad.
8. The Panchayat Secretary Gram Panchayat, Araura, Deo, Aurangabad.
9. The Branch Manager, Madhya Bihar Gramin Bank, Bishunpur Chatti, Deo, Aurangabad.
10. The Deputy Development Commissioner, Aurangabad.
11. Surendra Ram, the then Panchayat Secretary.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Santosh Kumar Pandey, Advocate
		Mr. Rajesh Kumar, Advocate
For the Respondent State:		Mrs.Archana Meenakshee, GP-6
For Respondent Bank	:	Mr. Suresh Prasad Singh No.1, Advocate
		Mrs. Kumari Rashmi, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 05-03-2020

An action taken against the petitioner, who was the Mukhiya of Gram Panchayat Raj, Aroura, in the district of Aurangabad, under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as ‘the Act’), whereby he has been removed from the post of Mukhiya, is under challenge in the present writ application. The impugned order dated 11.10.2019 has been issued under the signature of the Principal Secretary, Panchayati Raj Department, Government of Bihar. His removal is on the allegation of misappropriation of public fund to the tune of Rs.42.725 lakh.

2. This is to be noted that power of removal of Mukhiya, under Section 18(5) of the Act, earlier vested in the Commissioner of the concerned Division, which provision has subsequently been amended by Amendment Act 8 of 2008, whereby such power has now been vested in the State Government.

3. Before, I take note of the facts pleaded in the writ application and other pleadings available on record, I must note, at the outset, a notification dated 26.08.2008, issued by the Panchayati Raj Department, Government of Bihar, which has been issued under Section 152 of the Act. Section 152(1) of the Act confers upon the Government a power to cause an enquiry to be made by the Government Officers in regard to any manner with respect to which sanction, approval, consent or orders of the Government is required under the Act, by a general or special order. Sub-section (2) of Section 152 provides that the officer, holding such enquiry, shall have the powers of a civil Court under the Code of Civil Procedure, 1908. The notification has authorized concerned District Magistrate in a district to enquire into any matter with regard to the affairs of any Gram Panchayat and Panchayat Samiti. It further lays down that in case of the matters related with Gram Panchayat and Panchayat Samiti, the District Magistrate himself may make enquiry or get the matter enquired into by any of his subordinate officers, not below the rank of Sub Divisional Officer.

4. In the present case, an enquiry was conducted by the District Panchayat Raj Officer into the affairs of the Gram Panchayat in question, when it was found that huge money to the tune of Rs.42.725 lakh fraudulently withdrawn from the Bank Account of the Panchayat and was misappropriated by the petitioner.

5. The District Magistrate, Aurangabad, on the basis of the report of the District Panchayat Raj Officer, had sought an explanation from the petitioner through his letter dated 22.09.2018. In response to the communication dated 22.09.2018, the petitioner had submitted his explanation to the District Magistrate, Aurangabad, taking a plea that a sum of Rs.3,22,500/- only was withdrawn with the joint signature of the petitioner and the then Panchayat Secretary and rest of the amount was withdrawn by the then Panchayat Secretary using the petitioner's forged signature. For the fraudulent act of the then Panchayat Secretary, the petitioner had lodged a First Information Report, giving rise to Deo P.S. Case No.37 of 2018. The petitioner's explanation was not found satisfactory by the District Magistrate, Aurangabad, and, therefore, he made recommendation to the State Government for taking action against the petitioner under Section 18(5) of the Act.

6. The Principal Secretary of the Government, who is, admittedly, vested with the power to take decision under Section 18(5) of the Act, issued a show cause notice to the petitioner through letter dated 26.12.2018. Following were the charges against the petitioner : -

(i) A sum of Rs.42.72 lakh had been withdrawn from the account of the *Mukhyamantri Sat Nischay Yojna* in connivance with the Panchayat Secretary against the guidelines issued under the signature by the Panchayati Raj Department.

(ii) He withdrew rupees one lakh from the account of 14th Finance Commission and Rs.2.50 lakh from the account of 5th State Commission in a manner, which was in breach of

Government instructions and other provisions under the Bihar Panchayat Raj Act.

7. The petitioner, in his reply, took an objection to the jurisdiction of the Principal Secretary to exercise power under Section 18(5) of the Act and asserted that such power was vested with the Commissioner of a Division. The said objection has been turned down by the Principal Secretary, and rightly so, in view of clear provision under Section 18(5) of the Act as the same came to be amended in 2008. I shall not be dealing with this aspect of the matter any further as learned counsel appearing on behalf of the petitioner also, during the course of argument, has agreed that such power does not vest in the Commissioner any more after enactment of Amendment Act 8 of 2008, amending Section 18(5) of the Act.

8. Dealing with the merit of the first charge, he took a plea that though in the charge-sheet there is reference to letter dated 29.08.2018, as evidence, such letter was not supplied to him and, therefore, he was not in a position to properly deal with the said charge. He took a plea that the moment he learnt about the fraudulent withdrawal by the Panchayat Secretary of the amount, he lodged a criminal case giving rise to Deo P.S. Case No. 37 of 2018.

9. It is noteworthy, at this juncture, that another First Information Report has been registered as Deo P.S. Case No. 44 of 2008, in which the petitioner has been named as accused for illegal withdrawal of public money. In the said criminal case, the petitioner has been allowed anticipatory bail by an order dated 23.08.2018 passed in Cr. Misc. No. 47212 of 2018. The criminal case was pending till the date of passing of the impugned order under Section 18(5) of the Act.

10. The petitioner accordingly took a plea before the Principal Secretary that unless he was found guilty of the charge in the criminal cases, the proceeding should be dropped, as evidence in both the cases were identical. In response to the charge No.2 also, he took the same plea of absence of supply of the letter dated 29.08.2018, which was the enquiry report of the District Panchayat Raj Officer. He, however, took a plea that the amount in question was withdrawn under the joint signature of the petitioner and the Panchayat Secretary in order to complete the construction works of the Panchayat, which have been completed and the worth of the work got executed is Rs.4,69,420/-, which is more than the amount alleged to have been withdrawn.

11. A counter affidavit has been filed on behalf of the respondent State of Bihar stating therein that a general direction has been issued by the Panchayati Raj Department vide letter No.8088 dated 07.11.2014 in relation to the enquiry/action and in the matters of allegation of irregularities, misconduct and embezzlement of Government money at Panchayat level. It has further been submitted that there being serious allegation of fraudulent withdrawal of huge amount of public money, a decision was taken on the basis of report received by the State Government to initiate action under Section 18(5) of the Act. Reliance has been placed on a standing order dated 12.09.2018 issued by the Panchayati Raj Department, Government of Bihar, whereby the Principal Secretary of the Department has been authorized to hear the matters for the Government in a proceeding under Section 18(5) of the Act. The final order is required to be passed after obtaining necessary orders/approval from the Minister of the concerned department.

12. It is accordingly the case of the State of Bihar that reasonable opportunity was given to the petitioner to explain the allegation of fraudulent withdrawal and misappropriation of public fund. The petitioner took a plea before the Principal Secretary, during the course of hearing, that he had filed an application for grant of anticipatory bail, which has been allowed on the condition of paying back part of the amount, allegedly defalcated by him.

After receiving the petitioner’s explanation, comments were sought from the District Magistrate on the petitioner’s application. The explanation of the petitioner, the opinion/recommendation of the District Magistrate, Aurangabad, and all other relevant records were threadbare examined at the Government level and after due consideration of the facts on record, the petitioner was found guilty of violating statutory provision in withdrawal of Government funds. The petitioner was found guilty of committing gross financial irregularities, defalcation of Government funds, dereliction of duty and misuse of power for personal gains and accordingly decision was taken by the competent authority to remove him from the post of Mukhiya.

13. Let it be noted that when the matter was taken up by this Court on 17.12.2019, the Court had directed for production of original records of the proceeding leading to passing of the impugned order for ascertaining as to whether the communication of the District Magistrate, Aurangabad, dated 26.12.2018 was in fact served on the petitioner or not before impugned decision was taken.

14. Original records were produced and a counter affidavit has been filed by respondents No. 3 to 5. It has been stated in the counter affidavit that the petitioner has attempted to mislead this Court by placing the wrong facts. It has been asserted that letter No. 7269 dated 26.12.2018 had been duly served upon the petitioner through speed post, pursuant to which the petitioner appeared before the Principal Secretary and filed his explanation. It has further been stated that the show cause noticed dated 22.09.2018 was also served on the petitioner through speed post. Copies of the postal receipts dated 26.12.2018 and 22.09.2018 have been brought on record by way of annexures to the said affidavit.

15. Mr. Santosh Kumar Pandey, learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that since the allegation of misappropriation of public money against the petitioner is subjudice before a criminal Court, proceeding under Section 18(5) of the Act ought not to have been initiated on the basis of the same charge and identical materials and, in any case, the same ought to have been kept in abeyance. He has reiterated the stand that the documents on which the Principal Secretary intended to rely in support of the charge were not supplied to the petitioner. He has submitted that the report of the District Panchayat Raj Officer, Aurangabad, was not supplied to him, which was the basis for initiation of action against him. Referring to the impugned order, he has submitted that the petitioner’s undertaking before the Court below as recorded by this Court dated 23.08.2018 to deposit half of the amount defalcated as condition precedent for confirmation of his release on bail has wrongly been treated to be a material, relevant for taking action under Section 18(5) of the Act. He has submitted that only for the purpose of protection from his arrest in a criminal case, he had agreed to deposit total sum of Rs.21,36,250/- in installments for confirmation of his anticipatory bail.

16. Mrs. Archana Meenakshee, learned Government Pleader No.6, appearing on behalf of the respondent State of Bihar, has submitted that as the petitioner has made attempts to mislead this Court by making false submission of non-supply of the documents before the impugned order was passed, this writ application deserves to be dismissed on the said ground alone. She has contended that the petitioner was given adequate opportunity of hearing and during the course of hearing, he did not raise any such plea, which is being raised in the present application. She has contended that entire documents were made available to the petitioner with the letter dated 24.12.2018 through speed post. She has referred to a letter dated 05.02.2018 addressed by the petitioner to the Block Development Officer, Deo, wherein he had objected to the action taken against the then Panchayat Secretary, Surendra Ram, who was removed from the said Gram Panchayat. The petitioner had defended in his said letter dated 05.02.2018, the conduct of said Surendra Ram mentioning therein that there was no complain against him at all. He had, rather, requested to allow the Panchayat Secretary to continue as Panchayat Secretary of the Gram Panchayat, Aroura, as the petitioner did not have any difficulty with him in discharge of the functions of the Panchayat. She has thereafter referred to another letter written by the petitioner in quick succession on 10.02.2018, this time making an allegation against the same Surendra Ram of having withdrawn public money to the tune of Rs.42,73,151.80 by using his (petitioner's) forged signature.

17. She has submitted that the Government has rightly come to a conclusion that the petitioner could not explain his conduct of misappropriation of public fund of the Panchayat and, therefore, action of the Government in removing him in exercise of power under Section 18(5) of the Act cannot be said to be suffering from any infirmity, requiring this Court's interference.

18. The petitioner was a Mukhiya of Gram Panchayat, during which period the public money to the tune of Rs.42.72 lakh has been misappropriated. The petitioner does not dispute the factum of misappropriation of the said amount. There was an enquiry conducted by the District Panchayat Raj Officer, based on which the recommendation was made by the District Magistrate to the Government to take action against the petitioner under Section 18(5) of the Act. The petitioner was given a show cause notice, whereby he was asked to explain his conduct. It was his case before the Principal Secretary that the amount was withdrawn by the Panchayat Secretary by using the petitioner's forged signature. Whereas it is the case of the respondent State of Bihar that all reports/documents, which formed part of the show cause notice, was served on the petitioner, the petitioner has disputed receipt of the report of the District Panchayat Raj Officer. As has been noted hereinabove, the Block Development Officer has brought on record the details of service of notice with other documents. Paragraph 8 of the counter affidavit filed by respondents No. 3 to 5 is relevant in this regard and is being quoted hereinbelow : -

> **"8. That it is humbly submitted that the petitioner has tried to mislead the Hon'ble Court by placing wrong facts before this Hon'ble Court, as it is very clear that the letter no.7269 dated 26.12.2018 has been duly served upon the petitioner by the Panchayati Raj Department through speed post and pursuant to that the petitioner appeared before the respondent Principal Secretary, Panchayati Raj Department, Bihar, Patna and filed his explanation in the present matter as such it**

> **cannot be denied by the petitioner that the said letter no.7269 dated 26.12.2018 has not been supplied to him. Apart from that, show cause notice bearing letter no.938 dated 22.9.18 also received by the petitioner on 27.09.2018."**

19. In my opinion, no case for violation of principles of natural justice is made out as the petitioner was, admittedly, aware of the nature of allegation against him. There is absolutely no material fact, which has been relied on by the Government in the impugned order, which was not within petitioner's knowledge. The allegation, it is apparent, was of fraudulent withdrawal of public money. The money had been withdrawn under the petitioner's signature. It is, however, his case that his signature has been forged and he has not withdrawn any amount fraudulently and misappropriated the same. Further, in respect of some of the amounts, said to have been defalcated, the petitioner had taken a plea that the withdrawals were under his signature and the said amount has been used for development, in support whereof, measurement book was available. It has been noted in the impugned order that the petitioner failed to produce any document in support of his plea of execution of work against the said amount of Rs.2,50,000/- of 5th State Finance Commission Account and rupees one lakh of the 14th Finance Commission account. Further, learned counsel appearing on behalf of the State has rightly pointed out that the petitioner was earlier defending the acts of the Panchayat Secretary by writing letter on 05.02.2018 and merely five days thereafter, he somersoulted and came out with another case that the amount was withdrawn by the Panchayat Secretary.

20. To take successfully a ground of non-supply of any document/report, it is incumbent upon the person, taking such plea, to plead specifically and prove the actual prejudice caused by non-supply of such documents. Non-supply of a document/report would not *ipso facto* vitiate an action in absence of any prejudice caused and shown to have been caused to a person, adversely affected by the decision of the competent authority. [See ***State Bank of India and Others vs. Bidyut Kumar Mitra and Others***, reported in **(2011) 2 SCC 316**; ***Sarva U.P. Gramin Bank v. Manoj Kumar Sinha***, reported in **(2010) 3 SCC 556***;* and ***Haryana Financial Corpn. v. Kailash Chandra Ahuja***, reported in **(2008) 9 SCC 31**].

21. In any view of the matter, in my opinion, the petitioner has miserably failed to plead and prove any prejudice caused to him because of non-supply of any document to him. Prejudice, in my opinion, must be shown to have been caused and not merely presumed.

22. Considering the above, I do not find any merit in this application, which is accordingly dismissed.

23. No order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-03-2020
Transmission Date	N/A