

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3647 of 2021

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Anil Thakur, Son of Ramswarup Thakur Resident of Village- Bandhudih,
P.O.- Karnja, P.S.- Shambhuganj, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar at Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar at Patna.
3. The Monitoring Officer, Panchayati Raj Department, Government of Bihar at Patna.
4. The District Magistrate cum Collector, Banka.
5. The Sub- Divisional Officer, Banka, District- Banka.
6. The Block Development Officer, Shambhuganj, Banka.
7. The District Panchayat Raj Officer, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Md. Najmul Hodda, Advocate
For the Respondent/s	:	Mr.Archana Meenakshee (GP-6) Mr. Prabhat Ranjan, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 22-03-2021 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner is aggrieved by the order dated
14.12.2020, as contained in Annexure-12.

Mr. Y.V.Giri, learned senior counsel appearing on
behalf of the petitioner has referred to Section 18(5) of the
Gram Panchayati Raj Act, 2006 (hereinafter referred to as ‘the
Act). For ready reference, Section 18(5) of the Act is quoted
below:-



“18(5) Without prejudice to the provisions under this Act, if, in opinion of the Commissioner having territorial jurisdiction over the Gram Panchayat, a Mukhiya or an Up-Mukhiya of Gram Panchayat absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties (Disobedience of order of an authority established by law or) or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the (Government) may, after giving the Mukhiya or Up-Mukhiya a reasonable opportunity for explanation, by order, remove such Mukhiya or Up-Mukhiya, as the case may be, from office.

Provided when a system of Lok Prahari, instituted under sub-section (5) of Section 152 comes into force by a valid notification of the State Government, the Government may only pass order of removal of such Mukhiya or Up-Mukhiya, as the case may be, in the light of inquiry and recommendation of Lok Prahari for the



removal.

The Mukhiya or Up-Mukhiya so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies till further five years from the date of such removal. The Mukhiya or Up-Mukhiya so removed on rest of the charges shall not be eligible for re-election as Mukhiya or Up-Mukhiya or Member of Gram Panchayat during the remaining term of office of such Gram Panchayat.”

Mr. Giri would submit that the power to remove Mukhiya or Up-Mukhiya vests in the Government and the Government may after giving opportunity, remove the Mukhiya from his office. Referring to the second proviso to Section 18(5) Mr. Giri submits that the Mukhiya or Up-Mukhiya so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies. He further submits that in cases of grave consequences strict adherence to the procedure prescribed under the Act is a condition precedent. With reference to the statutory provision, he submits that the decision as contained in Annexure-12 is not decision of the State Government. The decision of the Principal Secretary, with the



approval of the Government does not satisfy the requirement of decision by the Government.

Considering the aforesaid submissions, the Court is of the view that the writ petition deserves to be allowed only on the ground that the decision was not taken by the Government independently and as such, the order dated 14.12.2020, as contained in Annexure-12 cannot sustain. It is accordingly quashed. The respondents are directed to strictly follow the provisions of Section 18(5) of the Act and on consideration of the rigourous of Section 18(5) of the Act, may pass fresh order in accordance with law at the earliest preferably within a period of 60 days from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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