

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 6650 of 2021

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1. Rajavansh Paswan Son of Ram Ramkeshavar Paswan Resident of village- Ugahani, P.S.- Chenari, District- Rohtas, Sasaram
 2. Asha Devi Wife of Manohar Sah Resident of village- Narayanpur, P.s.- Chenari, District- Rohtas, Sasaram
 3. Archana Devi Wife of Chaturbhuj Seth, Resident of village- Chenari, Near Chandani Chowk, P.s.- Chenari District- Rohtas
 4. Santosh Tiwary Son of Dashrath Narayan Tiwary Resident of village- Maura, P.S.- Chenari, District- Rohtas Sasaram
 5. Anil Kumar Son of Suryabali Paswan Resident of village- Kenar Khurd, P.S.- Chenari, district- Rohtas Sasaram

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar State Panchayati Raj Department, Govt. of Bihar Patna
2. The Joint Registrar, Bihar State Panchayat Raj Department, Govt. of Bihar, Patna
3. The Director, Bihar State Panchayat Raj Department, Govt. of Bihar, Patna
4. The Deputy Director, Bihar State Panchayat Raj Department, Govt. of Bihar, Patna
5. The Divisional Commissioner, Patna Division, Patna
6. The District Magistrate, District Rohtas at Sasaram
7. The Deputy Development Commissioner, District Rohtas at Sasaram
8. The District Panchayat Raj Officer, District Rohtas at Sasaram
9. The Sub Divisional Officer, Sadar Sub Division Sasaram, District Rohtas at Sasaram
10. The Block Development Officer, Block Chenari, District Rohtas at Sasaram

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Alok Kumar Choudhary, Advocate
Mr. Md. Jubair Ansari, Advocate
For the Respondent/s : Mr. Pratik Kr. Sinha (AC to GA- 5)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 24.08.2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the orders dated 27.01.2021, passed by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna, whereby and whereunder orders have been passed to discharge the petitioners from the post of Mukhiya, Gram Panchayat Raj Chenari and Kenarkala, District-Rohtas as also the orders dated 09.02.2021, passed by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna, whereby and whereunder orders have been passed to discharge the petitioners from the post of Mukhiya, Gram Panchayat Raj, Ughani, Dihara and Banauli, District-Rohtas.

3. The brief facts of the case are that all the petitioners, who are Mukhiyas of different Gram Panchayats in the State of



Bihar were elected in the year 2016, whereafter they are stated to have been working diligently. It is submitted that as per the provision and recommendation of the 14th Finance Commission report, the Panchayati Raj authorities i.e. the Mukhiyas were authorized to install solar lights in their Panchayat Raj area and for this purpose the Government of Bihar had issued various circulars. Thereafter, the District Magistrate, Rohtas had directed the Block Development Officer, Chenari to provide all necessary assistance to all the Mukhiyas including the petitioners herein for installation of solar light in the village street and funds were also transferred. It is the case of the petitioners that they had followed the government guidelines and had entered into agreements with various contractors for installation of solar lights in the village streets, after the decision of the Panchayats which were being headed by them and then they had utilized the funds for the work of installation of solar lights, however, the Contractors/Firms, which were given the work order, had engaged in delay in completing the work. Nonetheless, a team of *MANREGA*'s officials had visited various places in the village where work had started and had conducted an inspection whereupon the work was found to be thoroughly unsatisfactory, hence a recommendation was made



to the authorities for initiation of departmental proceeding against the petitioners, whereafter show cause notice was issued to the petitioners and after seeking their reply as also after hearing them, the impugned orders dated 27.01.2021 and 09.02.2021 were passed in an illegal manner.

4. The learned counsel for the petitioner Shri Alok Kumar Choudhary has submitted, by referring to section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act, 2006') that since a system of Lok Prahari has not been put in place by the State Government, the State Government cannot pass order of removal of Mukhiya or Up-Mukhiya inasmuch as such order of removal has to be passed in light of the enquiry and recommendation of Lok Prahari, however, in the State of Bihar the system of Lok Prahari has not come into being. In this regard, the learned counsel for the petitioner has referred to a judgment rendered by the learned Division Bench of this Court dated 27.04.2010 passed in ***L.P.A. No. 520 of 2010 (Rambha Devi vs. The State of Bihar & Ors.)***, paragraph nos. 10 and 11 whereof are reproduced herein below:-

“(10) Judged in this context, when the Legislature has provided grounds of wilful omission or refusal in performing of duties and functioning under the Act or



abusing power vested in him or is found to be guilty of misconduct in discharge of his duties, such seriousness allegation have to be by itself be grounded on specific instances, concrete materials and un rebuttable conclusion in this regard.

*(11) This aspect of the matter stands settled in the judgment of the Apex Court in the case of **Tarlochan Dev Sharma Vs. State of Punjab & Ors** reported in (2001) 6 SCC 260, wherein while dealing with the similar provision of removal of the precedent of the Municipal Council under the Punjab Municipal Act, 1911, it was held as follows:-*

“In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the



Act must be clearly made out. A president may be removed from office by the State Government, within the meaning of section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.” “The expression “abuse of powers” in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is “abuse of his powers or of habitual failure to perform his duties”. The use of plural powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase “abuse of powers” must take colour from the next following expression- “or habitual failure to perform duties”. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is “abuse of



powers” within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.”

5. Thus, it is submitted that the petitioners should not have been removed for a single error of decision inasmuch as admittedly all the petitioners have deposited back the alleged defalcated amount along with interest and moreover it is not the fault of the petitioners rather it is the fault of the Contractor inasmuch as the petitioners had acted in good faith and withdrawn the funds, whereafter money was handed over to the Contractors. Thus the impugned orders dated 27.01.2021 and 09.02.2021 removing the petitioners from the post of Mukhiya are fit to be set aside inasmuch as there has not been any willful omission in performing the duties and functions under the Act, 2006 as also there has been no abuse of the power vested in them and moreover, they have not misconducted themselves in discharge of their duties.

6. Per contra, the learned counsel for the respondent-State has submitted that the petitioner no. 1 was elected as Mukhiya of Gram Panchayat, Ugahani, the petitioner no. 2 was elected as Mukhiya of Gram Panchayat, Banauli, the petitioner no. 3 was



elected as Mukhiya of Gram Panchayat, Diharia, the petitioner no. 4 was elected as Mukhiya of Gram Panchayat, Kenarkala and the petitioner no. 5 was elected as Mukhiya of Gram Panchayat, Chenari, all under Chenari Block in the district of Rohtas. It is submitted that while acting as Mukhiyas of their respective Panchayats, the petitioners were allotted fund of 14th Finance Commission and all of them had spent the fund for installation of Solar lights which was neither permissible nor any solar light was installed. The matter was enquired into by the officials of MANREGA and subsequently by the S.D.O. and it was found that no work had been carried out on the spot, however, the funds had already been given to the agency to install the solar lights. Thereafter, explanation was sought from the petitioners and the matters were reported for action under Section 18(5) of Bihar Panchayat Raj Act. After due consideration, the petitioners were found guilty of misutilization of the government funds, hence in exercise of the power conferred under Section 18(5) of Bihar Panchayat Raj Act, all the petitioners were removed from the post of Mukhiyas. It has been further submitted that all the aforesaid panchayats were allotted fund of the 14th Finance Commission, with a direction to make expenditure as per the guidelines, but the petitioners



withdrew huge amount of funds on the pretext of giving the same to the agencies to install solar lights, however upon inspection of the spot, it was found that no work had been done, hence the petitioners were directed to refund the amount in question, whereupon the petitioners had refunded the same. It is stated that since the petitioners had tried to illegally grab and misutilize the public money, the matter was reported for taking action against the petitioners under Section 18(5) of Bihar Panchayat Raj Act. The respondents had issued a show cause notice to the petitioners and they were directed to file their reply, which was subsequently filed by the petitioners. The petitioners were also heard on different dates by the Additional Chief Secretary of the Department of Panchayat Raj (Respondent No. 6), Bihar, Patna, who found the petitioners at fault for acting against the guidelines of the State Government and also guilty of temporary embezzlement, hence they were removed from their posts by the impugned Orders dated 27.01.2021 and 09.02.2021.

7. The learned counsel for the respondent-State has relied upon a judgment rendered by a coordinate Bench of this Court, reported in **2016 (2) PLJR 459 (Roop Narayan vs. The State of Bihar & Anr.)**, paragraph nos. 11 & 14 whereof are reproduced



herein below:-

“11. The third issue canvassed by Mr. Singh is that by virtue of the Amendment Act 7 of 2011 the term ‘Commissioner’ occurring in various provisions of the ‘Act’ was replaced by the word ‘State Government’; the provision of appeal available under Section 25(6) of the ‘Act’ was removed; an proviso to Section 25(5) of the ‘Act’ was added and Section 44 was amended to provide for appointment of a Lok Prahari for enquiring into allegation of corruption, misconduct, lack of integrity etc. against a Chief Councillor, Deputy Chief Councillor, Officers and other employees of a Municipality, on a complaint or on a reference from the Government or on gathering any such information. He submits that in view of the amendment incorporating the proviso to Section 25(5) read with the amended provision of Section 44 of the ‘Act’, any such exercise of removal of a Chief Councillor or a Deputy Chief Councillor could be only undertaken after a Lok Prahari has been appointed under Section 44 of the ‘Act’ and a report has been received recommending for such action. He submits that in absence of the appointment of a Lok Prahari and in absence of any such report as mandated in law, no such exercise could have been undertaken. To support his contention on the well settled proposition of law that where a statute prescribes a mode and manner of performance of an act, it has to be done in that manner alone and that the State Government cannot ignore its responsibility of appointment of Lok Prahari, learned



counsel has referred to a judgment of the Supreme Court reported in (2007) 13 SCC 673 (J.K. Industries vs. the Union); paragraph-138.

14. I have heard learned counsel for the parties and I have perused the records and I would proceed to straightaway reject the issues raised by Mr. Jitendra Singh to give a restrictive meaning to the words 'meetings' or 'sittings' appearing in Section 25(5) of the 'Act' to exclude the meeting of Empowered Standing Committee for in absence of any restrictions provided under the provision, the word 'meetings' or 'sittings' appearing in Section 25(5) of the 'Act' would cover all meetings and sittings held in connection with the affairs of the Municipality including the meeting of the Municipality, the meeting of the Empowered Standing Committee or the special meeting held to consider a 'no confidence motion', as the case may be. In my opinion even the failure on the part of the State Government to appoint a Lok Prahari under Section 44 of the 'Act' is no ground to invalidate any proceedings initiated under Section 25(5) of the 'Act'. Although the legislature in its wisdom has created a body to enquire into the allegations against the elected representative and the officers of the Municipality but then a failure on the part of the State Government to carry out the obligation of appointment of a 'Lok Prahari' is no impediment for an exercise under Section 25(5) of the 'Act'. Even the proviso to Section 25(5) of the 'Act' does not reflect that an appointment of Lok Prahari is a condition precedent for such exercise



rather the only stipulation present in the proviso is that once a Lok Prahari is appointed under Section 44 of the 'Act' then any exercise undertaken under Section 25(5) of the 'Act' would only be on the basis of his recommendation. The language of the proviso itself is an answer to the issue raised by Mr. Jitendra Singh to reject the same."

8. The learned counsel for the respondent-State has next relied upon a judgment rendered by this Court dated 08.03.2021, passed in **CWJC No. 23516 of 2019 (Hirawati Devi vs. The State of Bihar & Ors.)**, paragraph no. 7 whereof is reproduced herein below:-

"7. I have heard the learned counsel for the parties and gone through the materials on record, from which it is apparent that there is no procedural irregularity so as to warrant interference with the impugned order dated 28.10.2019/01.11.2019, passed by the Principal Secretary, Panchayati Raj Department, Bihar and in fact the petitioner has failed to demonstrate any procedural irregularity, having been committed by the respondents, leading to passing of the aforesaid order under Section 18(5) of the Act, 2006. This Court further finds that merely because the system of Lok Prahari, as provided for under Section 18(5) of the Act, 2006, has not been put in place, the respondent authorities shall not be denuded of the power, vested under Section 18(5) of the Act, 2006, to remove a Mukhiya from office. In the present case it is



apparent from the records as also from the impugned order passed by the learned Principal Secretary, Bihar Panchayati Raj Department that the petitioner has been found guilty of misconduct in discharge of her duties as also has been found guilty of misappropriating the funds of the Panchayat in question and after providing a reasonable opportunity to the petitioner to furnish her explanation, apart from providing opportunity of personal hearing, the impugned dated 28.10.2019 / 01.11.2011 has been passed by the Principal Secretary, Panchayati Raj Department, Bihar, Patna, hence this Court does not find any infirmity in the said order dated 28.10.2019/ 01.11.2019, passed by the learned Principal Secretary, especially in view of the admission by the petitioner of having defalcated the said sum of Rs. 33.97 lakhs, which is apparent from the fact that she had deposited back the said amount along with interest in the account of the Gram Panchayat, after a lapse of two years, and that too only with a view to escape penal action under the law. The impugned order dated 28.10.2019 /01.11.2019, in any view of the matter, is a well reasoned, legal and a self speaking order and the petitioner has failed to demonstrate as to how the impugned order dated 28.10.2019/01.11.2019, passed by the learned Principal Secretary, Panchayati Raj Department, Bihar, Patna and the grounds mentioned therein for removal of the petitioner as a Mukhiya, are perverse and inapposite, hence I do not find any reason to interfere with the impugned order dated 28.11.2019, thus the present writ petition stands dismissed, being bereft of



any merit.”

9. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds from the pleadings of this case as also from the impugned orders dated 27.01.2021 and 09.02.2021 that the petitioners had willfully and under a conspiracy withdrawn huge sums of money and when enquiry was made and the said defalcation had come to the notice of the authorities, the petitioners had deposited back the defalcated amount along with interest in order to escape any action under Section 18(5) of the Act, 2006. It is also apparent that though huge sum of money was withdrawn with the conspiracy of the petitioners and the same was given to the Contractor/Agency in question for installing solar lights in the village streets but upon inspection, it was found that no work had been done at the stipulated places, which clearly depicts that the petitioners had illegally attempted to defalcate and mis-utilize the public money as also had engaged in temporary embezzlement of money, hence on merits, the petitioners do not have any case and moreover, this Court cannot re-appreciate the evidence by sitting in appeal over the judgment of the Additional Chief Secretary, Department of Panchayati Raj, Government of Bihar, Patna.



10. Now, coming to the legal issue raised by the learned counsel for the petitioner to the effect that since system of Lok Prahari has not been put in place by the State Government, the State Government could not have passed the order of removal of the petitioners from the post of Mukhiya, this Court finds that the law in this regard is no longer res integra, as is apparent from the judgments rendered by coordinate Benches of this Court in the case of Roop Narayan Singh (supra) and Hirawati Devi (supra), wherein, it has been held that failure on the part of the State Government to appoint a Lok Prahari cannot be a ground to invalidate any proceeding under Section 18(5) of the Act, 2006 especially in view of the fact that the said provision referred to under first proviso of Section 18(5) of the Act, 2006 only mandates that the Government may pass order of removal of such Mukhiya or Up-Mukhiya, as the case may be in the light of enquiry and recommendation of Lok Prahari for the removal, only when a system of Lok Prahari comes into force by a valid notification of the State Government, however, till date since the system of Lok Prahari has not been put in place, there is no question of any enquiry or recommendation of Lok Prahari. Thus, the said issue raised by the learned counsel for the petitioner stands negated being devoid of any merit. Last issue



raised by the petitioner, by referring to the judgment rendered by the learned Division Bench of this Court in the case of Rambha Devi (supra) is that the petitioners should not be removed for a single error of decision, considering the fact that the petitioners have deposited the alleged defalcated amount along with interest and there is no willful omission in performing duties as also there has been no abuse of power vested in the petitioners much less commission of any sort of misconduct on their part. In this regard, this Court finds that the petitioners have not committed any minor irregularity rather they have committed a very serious illegality i.e. defalcation of public funds, which is not only detrimental to the system of Panchayati Raj but also to the democratic fabric and moreover, the allegations have stood well proved, thus the said issue raised by the learned counsel for the petitioner has also got no legs to stand, hence is rejected. The judgment referred to by the learned counsel for the petitioner in the case of Rambha Devi (supra) is distinguishable in the facts and circumstances of the present case inasmuch as the said judgment deals with a case where the show cause notice and the order passed under Section 18(5) of the Act, 2006 were well beyond the scope of Section 18(5) of the Act, 2006 and most of the charges leveled against the



Mukhiya of the said case were vague and lacked details as also were incapable of being effectively replied but in the present case the situation is not so.

11. This Court also finds that the petitioners have failed to demonstrate any procedural irregularities having been committed by the respondents leading to passing of the aforesaid orders under Section 18(5) of the Act, 2006. This Court further finds that reasonable opportunity has been provided to the petitioners before passing of the impugned orders dated 27.01.2021 and 09.02.2021 and no infirmity can be found in the said orders in view of the admission of the petitioners regarding temporary defalcation of the sum in question which they had deposited back along with interest though after a lapse of considerable time. Moreover, the impugned orders dated 27.01.2021 and 09.02.2021 are well reasoned, legal and self speaking orders and the petitioners have failed to demonstrate that the grounds mentioned therein for removal of the petitioners as Mukhiya, are perverse and inapposite, hence there is no reason to interfere with the same.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands



dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	13.08.2021
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Transmission Date	

