

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7953 of 2020

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Vijay Kumar Das Son of Late Ramdayal Ram, Resident of Village -
Bishrampur (Chamardih), P.S. Aurangabad Muffasil, District- Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayat Raj Department, Government of Bihar, Patna.
2. The Officer - on - Special Duty, Panchayat Raj Department, Government of Bihar, Patna.
3. The Monitoring Officer, Panchayat Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Aurangabad.
5. The District Panchayat Raj Officer, Aurangabad.
6. The Block Development Officer, Deo, Aurangabad.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma
Mr.Rajesh Kumar
For the Respondent/s : Mr. Krishna Chandra

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

- 5 21-01-2021 1. Heard Mr. Ramakant Sharma, learned senior counsel

for the petitioner and Mr. Krishna Chandra, learned counsel

for the respondent /State.
2. The petitioner has been removed from the post of

Mukhiya by the impugned order.
3. The Additional Chief Secretary, Panchayat Raj

Department, Govt. of Bihar, has invoked the provisions

contained in sub-section 5 of Section 18 of the Bihar



Panchayat Raj Act, 2006 and has directed for removal of the petitioner from the post of Mukhiya with the result that he has been rendered ineligible for election to any Panchayat body / bodies till further five years from the date of such removal.

4. Without advertent to the merits of the decision, which is impugned in the present petition, Mr. Sharma, learned senior counsel for the petitioner has referred to provisions contained in Section 18 (5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") and has submitted that there was no occasion for the signatory of the order to have invoked the aforesaid provision. He further submits that grave civil and evil consequences have ensued in case of removal of the petitioner from the post of Mukhiya on the ground of misconduct in the discharge of his duty. In that event, every opportunity should have been given to the petitioner to show his cause and defend himself. That not having been done, the order suffers from an incurable vice of the order having been passed without ample opportunity to the petitioner, to his disadvantage.



5. Section 18 sub-clause (5) of the Act, reads as hereunder:-

“(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 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.]

6. For invoking the aforesaid provision, the authority having territorial jurisdiction over the concerned Gram Panchayat must come to a definite finding that the concerned Mukhiya has absented himself, without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under the Act, or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of duties. This power could be invoked also in the circumstance of disobedience of an order of authority established by law



or when the Panchayat functionary becomes physically and mentally incapacitated to perform his duties. If such Panchayat authority absconds for the reason of his having been made accused in a criminal case for more than six months, he could be removed but only after giving him a reasonable opportunity for furnishing his explanation.

7. From the order impugned, it becomes very clear that on 21.01.2020, the petitioner was present before the authority at the time of hearing along with his explanation. The copy of that explanation was sent to the District Magistrate, Aurangabad for obtaining his response to such show-cause reply and the matter was posted for 11.02.2020. On that day also, the petitioner was present but because of the Advocates abstaining from appearing in courts, the petitioner could not be represented by his lawyer. A further request was therefore made by the petitioner that an enquiry be directed to be conducted by a competent officer. The aforesaid request of the petitioner was rejected on the ground that enquiry had already been conducted by an officer of the rank of the District Panchayat Officer, who



is of an equivalent rank of Sub Divisional Officer.

8. However, the next date fixed in the matter was 17.03.2020.

9. The signatory of the order, by that time had not received the response of the District Magistrate over the show-cause reply of the petitioner and, therefore, a reminder was sent to him vide departmental letter no. 1317 dated 19.02.2020.

10. On 16.03.2020, the report of the District Magistrate was received in the office of the signatory of the order impugned. The matter was to be heard on 17.03.2020 but for some reason or the other, which has not been recorded in the order, the matter was posted for 21.04.2020. By that time, the National Disaster Management Act was promulgated and the countrywide lock-down also ordered in view of Covid-19 pandemic. As a result of this, the hearing of the matter remained suspended.

11. Again, vide letter no. 3563 dated 12.06.2020, the opinion / report of the District Magistrate was sent to the petitioner and the petitioner was asked to file his rejoinder to



such report and the matter was again posted for 23.06.2020.

12. On that day, the petitioner was not present and taking this absence of the petitioner from proceedings, the provision contained in Section 18 (5) of the Act was invoked and the order of removal was passed.

13. Learned senior counsel for the petitioner though has addressed on the merits of the case also but for the present, he jettisons the aforesaid objections and limits his argument to the question of his not having been given ample opportunity for presenting his case and that the circumstance did not warrant invocation of Section 18(5) of the Act.

14. Learned senior counsel for the petitioner has submitted that on all dates, the petitioner was present and his absence on one particular date, which date was fixed after one year of the last date on which, the proceedings were held, such a decision has been taken by the authorities concerned.

15. Learned counsel appearing for the respondent /State, however, submits that the entire explanation of the



petitioner and the report of the District Magistrate were available on the record which indicated that the money was swindled by the petitioner in his capacity as Mukhiya and, therefore, in public interest, the order has been passed. He further submits that while seeking bail in the criminal case lodged against the petitioner for the offence relatable to the charge in the present proceedings, the petitioner has deposited the amount which is alleged to have been defalcated, which, in fact, amounts to admission of the guilt.

16. The aforesaid argument of learned counsel for the State is not tenable for the reason that the order impugned speaks for itself that the petitioner was present on all dates except one, when Section 18(5) of the Act was invoked. The other reasons for rejecting the argument of the State is that the deposit of any amount under protest and subject to the rights and contentions of the depositor later with respect to a criminal case in which there are allegations of swindling of funds, cannot be termed as admission of guilt.

17. This Court is satisfied that the petitioner did not get sufficient opportunity to defend himself and the situation was



not ripe enough for the signatory of the order to have invoked the Section 18 (5) of the Act.

18. For the aforesaid reason, the order is set aside.

19. The Additional Secretary, Panchayat Raj Department, Govt. of Bihar, is directed to send notice to the petitioner for hearing within a period of 15 days from the date of receipt / production of a copy of this order. The petitioner shall be given further 15 days to put in his response and, thereafter within a period of further 30 days, a reasoned order shall be passed by the concerned respondent.

20. The petition stands disposed of with the aforesaid observation.

21. In case, in the event of the concerned respondent not passing an order within the aforesaid time-frame, the disqualification of not contesting in the election of Panchayat bodies shall not apply to the petitioner, if such delay is not attributable to the petitioner.

(Ashutosh Kumar, J)

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