

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.141 of 2021

In
Civil Writ Jurisdiction Case No.4559 of 2020

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AKHTAR ALI Son of Md. Haidar Ali resident of village- Kazipur, Post-Dumri, Police Station- Semri, District- Buxar

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Bihar, Patna
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna
3. The District Magistrate, Buxar
4. The Deputy Development Commissioner, Buxar
5. The Sub Divisional Officer, Dumraon
6. The Block Development Officer, Simri, Buxar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Singh, Senior Advocate
For the Respondent/s : Mr. Manish Kumar, AC to AAG -6

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 27-06-2022

Heard Mr. Sanjay Singh, learned Senior Advocate for the appellant and Mr. Manish Kumar, learned AC to AAG-6 for the State.

Invoking the provisions contained in Section 18 (5) of the Bihar Panchayat Raj Act, 2006, the appellant was removed from the post of Mukhiya of Kazipur Gram Panchayat in Simri Block in the District of Buxar.



Three charges were levelled against him *viz.* (i) the work executed under two different schemes were not according to the proposed plan; (ii) at one spot, two projects were shown to have been carried out for which money was withdrawn and (iii) lastly that there was financial irregularity in withdrawal of money without observing necessary formalities or getting an inspection done by the Public Construction Committee before concluding the project work.

The aforesaid order of removal passed by the Principal Secretary, Panchayati Raj Department was sustained by the learned Single Judge *vide* his order dated 21.01.2021 passed in C.W.J.C. No.4559 of 2020.

Mr. Singh, learned Senior Advocate for the appellant has drawn the attention of this Court to the fact that even though the learned Single Judge had found that two out of the three charges could not be established but the order of removal was sustained on the ground that one of the charges could not be disproved by the appellant.

He further submits that in the last instance when the order of removal was passed, the report which was submitted by the District Magistrate, after an inquiry, on the asking of the



Principal Secretary of the Department, the copy of such report was not served upon him for him to effectively defend himself.

Lastly, it has been submitted by Mr. Singh that assuming but not admitting the fact that there was some irregularity in the withdrawal of money or its use, it would definitely not make out a case of misconduct entitling the authorities to exercise the powers under Section 18 (5) of the Panchayati Raj Act, 2006.

He further submits that Section 18 (5) of the Act clearly reflects that only in certain exceptional circumstances conceived in the provision, such an extreme step of removal of a Mukhiya could be directed and those conditions get triggered when a Mukhiya absents himself on three consecutive meetings of the sitting of Panchayat without any sufficient cause or he willfully omits to or refuses to perform the duties and functions under the Act or abuses the power vested in him or is found to be guilty of misconduct in the discharge of duties or has become physically or mentally incapacitated for performing his duties or has been absconding after having been made an accused in a criminal case for more than six months.

It has been urged on behalf of the appellant that abuse of power or misuse of power are serious charges which cannot casually be saddled on anyone for justifying his removal from the



engagement. It would be highly unreasonable and inappropriate to declare every act of a public functionary to be an abuse of his power or misuse of power. The positive intentional misconduct is an important ingredient in holding any act or omission to be an abuse or misuse of power.

The three charges against the appellant were interlinked and the order passed by the Principal Secretary, Panchayati Raj Department clarifies that because of some confusion with respect to the two different schemes at two different times, such charges were levelled. The only thing which was found to be in aberration of the established principles of executing such work was that the withdrawal of money and its consequent consumption in carrying out the project was not vetted by a committee which was required to oversee such expenses.

Mr. Singh, learned Senior Advocate, therefore, submits that if two of the cognate charges were found to be non-existent, the third charge *viz.* the charge on which the power under Section 18 (5) of the Bihar Panchayat Raj Act was invoked, fell to the ground.

He further submits that the report against him ought to have been afforded to him for justifying his removal from the post of Mukhiya.



It has been pointed out to this Court that considering the fallacy in the order passed by the Principal Secretary as also the learned Single, who sustained the order, the co-ordinate Division Bench had stayed the operation of the order, perhaps for allowing the appellant to contest in the next election of Mukhiya, which he otherwise would not have been able to contest for the reason of his having been punished and removed from such engagement under the provisions contained in Section 18 (5) of the Bihar Panchayati Raj Act, 2006.

The learned Counsel for the State on the other hand has submitted that the appellant had contested for the post of Mukhiya in the next term but he lost. The stigma of removal if at all would have attached to the appellant, would last only for five years and not further. Thus, any discussion on the order of removal or the order of the learned Single Judge would only be academic.

Be that as it may, since we have found that the order of removal of the appellant from the engagement was bad in the eyes of law and we also do not find that the order passed by the learned Single Judge took note of the above-noted grounds, we are inclined, even for academic purposes, to set aside the order passed by the Principal Secretary of the Department and consequently of the learned Single Judge, even if such judgment does not after the



position of the parties today with the appellant having contested the next election unsuccessfully.

The order dated 21.01.2021 is thus set aside.

The appeal stands allowed accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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