

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.442 of 2021

In
Civil Writ Jurisdiction Case No.7646 of 2020

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Anuj Kumar Son of Saryug Chaudhary Resident of village- Patharaura, post
office- Patharaura, police station- Chabilapur, District- Nalanda (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The Special Secretary, Panchayati Raj Department, Government of Bihar, Patna.
5. The District Magistrate Nalanda.
6. The District Panchayati Raj Officer, Nalanda.
7. The Sub- Divisional Magistrate, Rajgir (Nalanda).
8. The Block Development Officer, Rajgir (Nalanda).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandan Kumar, Advocate

For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 22-09-2023

1. Heard learned counsel for the parties.



2. The instant appeal has been preferred against the judgment dated 28.6.2021 whereby the learned Single Judge was pleased to dismiss CWJC no. 7646 of 2020 filed by the appellant.

3. The facts giving rise to the instant appeal are that pursuant to an FIR being Vigilance Case no. 34 of 2018 having been registered under section 7 of the Prevention of Corruption Act on 6.8.2018, the Chief Secretary, Panchayati Raj Department, Government of Bihar by letter no. 4715 dated 26.7.2019 as also the District Magistrate, Nalanda vide letter no. 161 dated 6.5.2019 recommended for removal of the petitioner under section 18(5) of the Bihar Panchayati Raj Act, 2006 (hereinafter referred to as 'the Act').

4. A show cause notice was issued to the petitioner on 13.8.2019 to which he submitted his explanation. Opinion of the District Magistrate was received on the reply submitted by the petitioner and by order dated 19.8.2020 passed by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar the petitioner was removed from the post of Mukhiya under section 18(5) of the Act. The order of removal was challenged in the writ application and the same having been dismissed by order dated 28.6.2021, the instant



appeal has been preferred.

5. Learned counsel for the appellant submits that pursuant to the notice dated 27.4.2019 received by the appellant from the District Panchayati Raj Officer, Nalanda, whereby some clarifications were sought, he submitted his reply along with documentary evidence with respect to each and every allegation. The appellant was illegally found guilty of misconduct by order dated 3.8.2020 passed by the Additional Secretary, Panchayati Raj Department. It is submitted that the power exercised under section 18(5) of the Act was absolutely arbitrary, the same having been passed while the criminal case was still pending and is subjudice before the Special Court of Vigilance, Patna. The appellant is not absconding nor has he been convicted in the criminal case. There is no evidence against him with respect to financial irregularities.

6. The appeal is opposed by learned counsel for the respondents.

7. Having heard learned counsel for the parties and taking into consideration the material on record, it transpires that the appellant was arrested red handed by the vigilance authorities taking bribe of Rs.50,000/- for which an F.I.R. being Vigilance P.S. Case no. 34 of 2018 in Patna district was registered on



6.8.2018 under section 7 of the Prevention of Corruption Act and the same is pending in the Court of learned Sub-Judge, Vigilance, Patna. Subsequently, the appellant was released on bail on 14.12.2018.

8. The District Panchayati Raj Officer, Nalanda by letter dated 24.7.2019 asked the appellant to submit his explanation to which the appellant submitted his reply on 4.5.2019. The District Magistrate, Nalanda by his letter no. 671 dated 6.5.2019 and the Chief Secretary of the Panchayati Raj Department, Government of Bihar by letter no. 4715 dated 26.7.2019 recommended for removal of the appellant under section 18(5) of the Act.

9. A show cause notice was issued on 13.8.2019 to which the appellant submitted his reply. By order dated 3.8.2020 passed by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, order was passed to remove the appellant from his office/post for the reason of his being guilty of misconduct in discharge of his duties and of abusing the power vested in him.

10. It may be mentioned here that section 18 of the Act deals with the resignation or removal of the Mukhiya or Up-Mukhiya and sub-section (5) thereof provides for the grounds



for removal which includes abuse of power vested in him or his being found guilty of misconduct in the discharge of his duties. Section 18(5) of the Act is extracted hereinbelow for ready reference.

“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 2[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]3 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.

4[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.

3[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). ”

11. So far as the facts of the instant case is concerned, the appellant was caught red handed by the vigilance authorities taking a bribe of Rs.50,000/- which led to registration of an FIR against him under the Prevention of Corruption Act. After issuing notice to him and having considered his reply received a reply, by order dated 3.8.2020, in exercise of powers under section 18(5) of the Act, the Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna was pleased to remove him from the post of Mukhiya.

12. Having perused the order removing the appellant as Mukhiya, this Court is of the opinion that the order was correctly passed. Besides other grounds, the order of removal under section 18(5) of the Act can also be passed for misconducts in the discharge of duties. So far as the contention of learned counsel for the appellant that the order impugned was not sustainable in view of the criminal case still being pending and the appellant still not having been found guilty therein is concerned, the Court finds no merit in the said submission as the evidence required in a criminal case is of proof beyond all reasonable doubts while that required in passing an order under section 18(5) of the Bihar Panchayati Raj Act, 2006 is on the



preponderance of probability ie more akin to a departmental proceeding.

13. In view of the facts and circumstances stated hereinabove. The Court finds no merit in the instant appeal and the same is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash

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CAV DATE	
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