

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21051 of 2021

Bechan Tatama Son of Ram Prasad Tatma Resident of Village- Bageshwari,
Harijan Tola, P.O.- Gerki, P.S.- Jokihat, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Panchayati Raj Department, Government of Bihar, Patna.
3. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
6. The District Magistrate-cum- District Election Officer (Panchayat) Araria, District- Araria.
7. The Block Development Officer, Jokihat -cum- Returning Officer Panchayat Election, 2021 Jokihat Block, District- Araria.
8. Deepak Kumar Rajak Son of Sitaram Rajak Resident of Village- Bageshwari, Harijan Tola, P.O.- Gerki, P.S.- Jokihat, District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Mr.Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Sanjiv Nikesh, Advocate
For the State	:	Mr. Kumar Alok, SC -7

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V JUDGMENT

Date : 27-06-2023

Heard learned counsel for the parties.

2. The petitioner has preferred the present petition

for following reliefs:



(i) for declaring the Respondent no.8 disqualified to hold the post of Ward Member of Gram Panchayat Raj Bhagwanpur Territorial Constituency No.14 under Jokihat Block of Araria District on the ground that:

(a) the Respondent no.8 is absconding in a criminal case i.e. Case No.2556 of 2015 pending in the court of learned Additional Chief Judicial Magistrate III. Varanasi since 2015 for more than six months;

(b) he had not mentioned about this case in his affidavit filed in Schedule-IIIA along with his nomination paper before the Returning Officer;

(ii) for a further declaration that absconders for more than six months are not entitled to hold the elected post of grass root democracy, whether it is rural or urban the Respondent no.8 is also disqualified to hold the post if he is absconding in a criminal case since 2015;

(iii) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to hold a fresh election in Ward No. 14 of Gram Panchayat Raj, Bhagwanpur, if on consideration, the Respondent no.8 is declared disqualified to hold the post;



(iv) for issuance of any other appropriate writ/writs, order/ orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. The matrix of facts giving rise to the present petition is/are as follows:

(i) the matter relates to Gram Panchayat Raj, Bhagwanpur, Jokihat Block in the district of Araria from where the respondent no. 8 had filed his nomination for the post of Ward Member of Ward No. 14 in 2021 Panchayat election;

(ii) during the scrutiny of the nomination which was scheduled for 05.11.2021, the petitioner filed his objection before the Returning Officer alleging that:

(a) the respondent no. 8 is an accused in Cr. Case no. 2556 of 2015 pending before the learned ACJM III, Varanasi under Sections 452, 323, 504 and 506 of the I.P.C. and is absconding since 2015;

(b) he has not disclosed the criminal case pending against him in his nomination paper;

(iii) however, the Returning Officer without issuing show cause notice to the respondent no. 8 returned the



petitioner's objection and accepted his nomination paper;

(iv) he, thereafter sent copy of the said objection to the State Election Commission (hereinafter for short 'the SEC') which in turn took up the matter and vide letter no. 76747 dated 25.11.2021 directed the District Election Officer to hold an inquiry and do the needful.

(v) in the meantime, the election process took place whereafter the respondent no. 8 was declared elected as Ward Member from Ward No. 14.

(vi) left with no remedy, the present petition has been filed.

4. Mr. S.B.K. Manglam, learned counsel appearing for the petitioner submits that as per section 18(5) of the Bihar Panchayat Raj Act, 2006, (hereinafter for short 'the Act') it is to be noted that if a Gram Panchayat 'Mukhiya' or 'Up-Mukhiya' absents without sufficient cause from the specific meeting or sittings or wilfully omits or refuse to perform his duty and functions under this Act or is absconding being an accused in criminal case from more than six months, the Government can remove the 'Mukhiya' or 'Up-Mukhiya' after granting reasonable opportunity for explanation from the office.



5. It is appropriate to incorporate section 18(5) of
'the Act' for proper appreciation :

“ 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.

4Provided 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. He submits that although the Ward member has not been incorporated in the said 18(5) of ‘the Act’, the same can be applied in the present case.

7. He further took this Court to Section 44 (4) of ‘the Act’ which again is more or less similar to section 18(5) of ‘the Act’ and read as follows:

44(4) Without prejudice to the provisions under this Act, if in opinion of the [Government] having territorial



jurisdiction over the Panchayat Samiti, a Pramukh or an Up-Pramukh of Panchayat Samiti 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 Pramukh or Up-Pramukh, as the case may be, a reasonable opportunity for explanation, by order, remove such Pramukh or Up-Pramukh, 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 Pramukh/Up-Pramukh, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.

[The Pramukh or Up-Pramukh



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 Pramukh or Up-Pramukh so removed on rest of the charges shall not be eligible for re-election as Pramukh or Up-Pramukh during the remaining term of office of such Panchayat Samiti.

8. Then, he took this Court to Section 70(5) of the Act which again read as follows:

(5) Without prejudice to the provisions under this Act, if in opinion of the [Government] having territorial jurisdiction over the Zila Parishad, a Adhyaksha or the Upadhyaksha of Zila Parishad 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 Adhyaksha or the Upadhyaksha, as the case may be, a reasonable opportunity for explanation, by order, remove such Adhyaksha or the Upadhyaksha, 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 Adhyaksha or Upadhyaksha, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.

The Adhyaksha or Up-Adhyaksha 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 Adhyaksha or Up-Adhyaksha so removed on rest of the charges shall not be eligible for re-election as Adhyaksha or Up-Adhyaksha during the remaining term of office of such Zila Parishad.

(2) An Adhyaksha or Up-



adhyaksha removed from the office under sub- section (1) may also be removed by the Government from the membership of the Zila Parishad.

9. He thus submits that anything which applies to the 'Pramukh' or 'Up-Pramukh' and/or 'Mukhiya' or 'Up-Mukhiya', can also be applied on the Ward member. However, he concedes that 'the Act' is silent on what to do with the Ward member when similar situation arises.

10. The contention of the learned counsel for the petitioner is that the Court can step in when the entire facts are clear on the face of it.

11. Mr. Sanjeev Nikesh, learned counsel appearing for the State Election Commission, Bihar, Patna submits that once the nomination paper of the respondent no. 8 was cleared and he contested the election and subsequently got elected, not much can be done.

12. It has further been submitted by him that pursuant to the letter dated 01.12.2021 issued by the District Panchayati Raj Officer, Araria (Annexure-R-5 4-5/1 of the counter affidavit), the Returning Officer-cum-Block Development Officer, Jokihat vide letter dated 14.01.2021 informed that in the nomination paper, the respondent no. 8



chose not to record his criminal case pending against him.

13. The further contention of the learned counsel is that the Commission however did not received any formal report from the District Administration pursuant to the query made and thus it will be taking necessary action under Section 125(A) of 'the said Act' against the official concerned.

13. He further took this Court to Section 136 of 'the Act' which deals with the disqualification of membership and read as follows:

136. Disqualification for Membership.-(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad if such person-

(a) is not a citizen of India;

(b) is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years;



(c) is in the service of Central or State Government or any local authority

(d) is in service of any such institution receiving aid from Central or State Government or any local authority;

(e) has been adjudged by a competent court to be of unsound mind:

(f) has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;

(g) has been sentenced by a criminal court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behavior under Section 109 or Section 110 of the Code of Criminal Procedure, 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed;

(h) has under any law for the time being in force become ineligible to be a member of any local authority;

(i) holds any salaried office or office of profit under the Panchayat;

(j) has been found guilty of corrupt practices;

¹[(k) [xxx]



Provided that on being found guilty of corrupt practices, the disqualification shall cease after six years of general election.

(2) If any question arises as to whether Member of Panchayat at any level including Mukhiya of Gram Panchayat, Pramukh of Panchayat Samiti or Adhyaksh of Zila Parishad or Sarpanch of Gram Kutchahry or Panch of Gram Kutchahry was disqualified before election or has incurred disqualification after election as provided in Article 243-F of Constitution of India and subject to any disqualifications mentioned in Section 135 or sub-Section (1) of Section 136, the question shall be referred for the decision of State Election Commissioner. The matter of disqualification before or after election may be brought to the notice of State Election Commission in the form of complaint, application or information by any person or authority. The State Election Commission may also take suo motu cognizance of such disqualification and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard:

Provided that the State Election Commission shall not be entitled



to entertain any complaint or petition subject matter of which is purely an election dispute such as corrupt practice, wrongful rejection of nomination etc. in accordance with Article 243-0 of the Constitution of India read with Section 137 of the Act.]

(3) If a person, who is chosen as a member of Panchayat, a Mukhiya, a Sarpanch [or Panch is or becomes member of the Lok Sabha, Rajya Sabha, State Legislative Assembly or State Legislative Council, or is or becomes a Municipal Councillor or a Councillor of a Municipal Corporation or a Member of a Sanitary Board, or a member of a Nagar Panchayat or a member of any other Panchayat or Mukhiya, Sarpanch [or Panch, then within fifteen days from the date of commencement of the term of office of a member of Lok Sabha, Rajya Sabha, State Legislative Assembly or State Legislative Council, or of a Councillor of Municipality or Municipal Corporation or a Member of Sanitary Board or Nagar Panchayat or a Member of other Panchayat or Mukhiya or Sarpanch [or Panch, his seat in the Panchayat shall become vacant unless he has previously resigned his seat in the Lok Sabha, Rajya Sabha, State Legislative Assembly or State



Legislative Council Municipality or the Municipal Corporation, Sanitary Board or the Nagar Panchayat or of any such Panchayat as the case may be.

(4) Oath and affirmation.- Immediately after election a member of a Panchayat, Sarpanch or Panch of a Gram Katchahry and Mukhiya of Gram Panchayat shall make and subscribe before such person as the State Election Commission may appoint in this behalf, an oath or affirmation and if such member of a Panchayat Sarpanch or Panch of a Gram Katchahry or Mukhiya declines or otherwise refuses to make and subscribe such oath or affirmation as aforesaid shall be deemed to have vacated his office forthwith. If such member of a Panchayat, Sarpanch or Panch of a Gram Katchahry or Mukhiya fails to make and subscribe an oath affirmation after election and within three months of the date on which his term of office commences, his seat on the expiry of the said period shall be deemed to have become vacant”.

15. He as such submits that once the nomination of the respondent no. 8 was cleared and subsequently he got elected, in view of Section 136 of ‘the Act’, the pendency of the criminal case against him cannot be a ground for



disqualification of membership. He as such opposes the relief sought for by the petitioner.

16. Although the respondent no. 8 has appeared through its lawyer, he has nothing to say except that he has been elected by the electorate in his constituency.

17. From the averment so made by the respective parties, the facts which are not in dispute is/are that:

(i) the respondent no. 8 was facing a criminal case in the Court of Varanasi at the relevant period;

(ii) in his nomination paper, he deliberately chose to skip the same;

(iii) the petitioner preferred objection before the Returning Officer-cum-Block Development Officer, Jokihat, Araria who chose to look the other way while clearing his nomination papers;

(iv) subsequently, in the election that took place, the respondent no. 8 was declared elected from Ward no. 14 as Ward member;

(v) to the query made by the State Election Commission, no report, whatsoever, was provided by the District Administration;

18. The question that arises before the Court is as



to what will be the consequence.

19. Learned counsel for the petitioner cited sections 18(5), 44(4) and 70(5) of 'the Act'. A plain reading of the same shows that it talks about the removal of the '*Pramukh*' or '*Up-Pramukh*' and/or '*Mukhiya*' or '*Up-Pramukh*'. So far as the Ward member is concerned, it does not find place in 'the Act'.

20. Further, so far as the non submission of report by the District Administration is concerned, the Election Commission has already submitted that they will be taking appropriate action against the erring official.

21. Further, a perusal of section 136 of 'the Act' shows that it talks about sentencing by the criminal Court to be an offence other than political offence for a term exceeding six months to be the grant of disqualification. It however, do not talk about pendency of criminal case to be a criteria for the said disqualification.

22. In the aforesaid background, this court is unable to extend any relief to the petitioner.

23. The writ petition accordingly stands dismissed.

24. Let a copy of the order be sent to the



Additional Chief Secretary, Panchayati Raj Department,
Bihar, Patna for his perusal and needful.

(Rajiv Roy, J)

Jagdish/kiran/-

AFR/NAFR	NAFR
CAV DATE	20.06.2023
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Transmission Date	

