

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.700 of 2024

In

CIVIL REVIEW No.45 of 2024

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Shailesh Paswan, Son of Sri Budhu Paswan, Resident of Village and P.O.-
Modanganj, P.S -Ghosi, District -Jehanabad, Bihar- 804432

... .. Appellant/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Lok Prahari-Cum-Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub-Divisional Officer, Jehanabad.
5. The District Panchayat Raj Officer, Jehanabad.
6. The Block Development Officer-Cum-Executive Officer (Panchayat Samiti), Modanganj, Govindpur Gram Panchayat, Jehanabad.
7. The Panchayat Secretary, Modanganj, Govindpur Gram Panchayat, Jehanabad.
8. Abdhesh Kumar Bikrant, Son of Late Yogendra Yadav, Resident of Govindpur, Modanganj, P.S. Ghoshi, District- Jehanabad.
9. The State Election Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y.V.Giri, Sr. Advocate Ms. Shrishti Singh, Advocate
For the State	:	Mr. Kunal Tiwari, AC to GA-2
For the Resp. No. 8	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Venkatesh Kirti, Advocate Mr. Sanket, Advocate Mr. Fazle Karim, Advocate
For the Elec.Commission:	:	Mr. Ravi Ranjan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-07-2024

The appeal is filed from an interim order in a Civil Review, wherein the judgment sought to be reviewed was stayed.



2. We have to briefly deal with the facts which led to the writ petition. A complaint was lodged by the 8th Respondent who was the Up-Mukhiya, against the Mukhiya who is the appellant herein, before the Lok Prahari-Cum-Divisional Commissioner, Magadh Division, Gaya, who is impleaded as the 2nd Respondent. The Lok Prahari made a recommendation to the Additional Chief Secretary, who passed an order of removal under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (For brevity 'the Act'). The said order was said to be without any notice to the appellant, which was challenged in CWJC No. 18126 of 2023, titled as ***Shailesh Paswan v. The State of Bihar & Ors.*** The same was allowed, however, the 8th Respondent, who was the complainant, was not impleaded there.

3. Shri Y.V.Giri, learned Senior Counsel for the appellant, submits that the Up-Mukhiya was only officiating as a Mukhiya and the Hon'ble Supreme Court has, in various decisions, declared that an officiating person need not be impleaded. The reliance is placed on ***Ravi Yashwant Bhoir v. Collector, (2012) 4 SCC 407*** and ***Poonam v. State of U.P., (2016) 2 SCC 779***.

4. ***Ravi Yashwant Bhoir***(supra) was in the



circumstance of an ex-President having moved against the currently elected President; leading to the latter's removal. The removal was challenged without making the complainant a party. It was held that the complainant being a political rival and only concerned about the abuse of public office, is not a necessary party. Here, the complainant is the Up-Mukhiya who moved against the Mukhiya. **Poonam**(supra) dealt with the challenge against the cancellation of allotment of a fair price shop, wherein the allottee, subsequent to the cancellation, was held to be not a necessary party. This is also distinct from the instant case.

5. We are of the opinion that though an officiating person who officiates by virtue of removal, need not be impleaded, the complaint having originated from the 8th Respondent, it was only proper that the 8th Respondent was impleaded; especially when he was the Up-Mukhiya who is interested directly in the proper conduct of the local body.

6. The 8th Respondent filed a review from the judgment. Before dealing with the review itself, the operation of the judgment was stayed by the impugned order in the appeal. The writ petition having been allowed, it was only appropriate that the review was first considered and it was also perfectly



competent for the learned Single Judge to have reviewed the same. Thus, we are of the opinion that the stay order is not a proper order.

7. The issue, in fact, is in a very short compass insofar as whether under Section 18(5) of the Act, the Authority could remove a Mukhiya or Up-Mukhiya without a reasonable opportunity for explanation.

8. Shri Mrigank Mauli, learned Senior Counsel for the 8th Respondent, refers to the proviso to Section 18(5) and submits that when the system of Lok Prahari is instituted, then necessarily the Lok Prahari has to conduct an enquiry and make a recommendation and removal can only be on the basis of recommendation of the Lok Prahari.

9. We are quite convinced that the removal can only be with the recommendation of the Lok Prahari, but, however, even if the Lok Prahari recommends removal, the Authority under Section 18(5) could differ from the Lok Prahari, insofar as Clause (5) clearly speaks of a reasonable opportunity for explanation, before the removal of Mukhiya or Up-Mukhiya, as the case may be, from office. Despite the recommendation for removal, it does not regulate or govern the decision under Section 18(5), since under Section 18(5) removal could be



declined.

10. In the present case, there is no dispute as to the recommendation of the Lok Prahari, which is for removal. There is also no dispute to the position that the Commissioner is the Lok Prahari designated and for purposes of Clause (5), it will be the Additional Chief Secretary, who will be the Authority under Section 18(5).

11. In the above circumstance, we are of the opinion that since the allegation is only of violation of principles of natural justice, it would be appropriate for the Additional Chief Secretary to consider the same within a time frame. The appellant and the 8th Respondent shall appear before the Additional Chief Secretary on 31st of July, 2024. The Lok Prahari report shall be furnished to the appellant and on the same day or any other day fixed within a week, with intimation of the date personally on 31st itself, to both the appellant and the 8th Respondent or their authorised representative, the matter shall be heard within two weeks thereafter and finalised.

12. There is a question of, who should officiate as of now. We are of the opinion that in the review, it was not proper for the learned Single Judge to have granted stay of the judgment. In such circumstance, we interfere with the order, but



make it clear that the Mukhiya, the appellant shall continue without taking any policy decision till the matter is finally decided under Section 18(5) of the Act.

13. We dispose of the appeal, though from an interim order in the review; invoking our jurisdiction under Article 226 of the Constitution of India.

14. We make it clear that the direction issued by us is only in the context of the learned Single Judge, in the judgment in the writ petition having interfered with the order passed on the ground of violation of principles of natural justice. The order passed under Section 18(5) as per our directions, could be challenged by either parties on any other grounds, but for the ground of violation of principles of natural justice; if our directions to supply the recommendation and hear the affected parties, are complied with.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024
Transmission Date	NA

