
(2014) 12 PAT CK 0061
In the Patna High Court
Case No : CWJC No. 9576 of 2014

Akchay Kumar Mandal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2015) 2 PLJR 11

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Swapnil Kumar Singh, Rajeev Ranjan Singh and Anand Kumar, for the Appellant; P.K. Verma, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.?This writ petition is directed against the order dated 23.5.2014 bearing Memo No. 3548 dated 23.5.2014, whereby the petitioner has been removed from the post of Mukhiya, Gram Panchayat Raj, Mohanpur, Block-Goradih, District-Bhagalpur by the Principal Secretary, Panchayati Raj Department in exercise of powers vested under Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") and the Rules framed thereunder. With the consent of the parties the writ petition is being disposed of at stage of admission itself by way of this judgment.

2. The facts of the case briefly stated is that the petitioner was elected as a Mukhiya of the Gram Panchayat in the election held in 2011. Pursuant to the decision taken for installation of solar lights within the Panchayat that the petitioner obtained quotations from different suppliers and which is stated to have been placed before the Gram Sabha. Of the three quotations so received, since the quotation given by M/s. Akshay Enterprises was found to be the most economical, it was approved by the Gram Sabha on 18.7.2011 and whereafter an agreement was entered into between the proprietor and the petitioner for installation of solar lights, a copy of which is a part of Annexure-1 series. The decision taken by the petitioner as regarding the installation of solar light was

duly approved by the Block Development Officer who also happens to be the Executive Officer of the Gram Panchayat and who while giving administrative approval in the light of the circular of the Rural Development Department dated 15.11.2006 has stated that the agreement was in tune with the guidelines of the State Government dated 31.5.2006. The administrative approval granted by the Executive Officer-cum-Block Development Officer, Goradih also forms part of Annexure-1 series.

3. One of the members of the Panchayat, namely, Jyotish Yadav filed a complaint before the respondent authorities of the Panchayat Raj Department charging the petitioner with financial irregularities in the purchase of solar lights and which also led to institution of a criminal case giving rise to Goradih (Jagdishpur) P.S. Case No. 60 of 2012. While the criminal case is pending consideration before the criminal court the authorities of the Panchayati Raj Department have proceeded on the complaint and which has culminated in the order of removal passed under Section 18(5) of "the Act" and hence this writ petition.

4. Mr. Arun Kumar has appeared on behalf of the petitioner while the State is represented by Mr. P.K. Verma, learned Additional Advocate General No. 5 and the complainant Jyotish Yadav has appeared through counsel Mr. Rajeev Ranjan Singh and Mr. Anand Kumar.

5. Learned counsel for the petitioner while admitting to the lapse committed by the petitioner in not going for open tender has submitted that the petitioner was elected as a Mukhiya in June, 2011 and in July, 2011 he was required to install the solar lights. He submits that the petitioner had no technical know how or procedure required to be followed nor he was given any such information by the Executive Officer-cum-Block Development Officer who is expected to provide guidance in matters involving financial responsibilities. It is submitted that going by prudence, the Mukhiya invited quotations from different suppliers and of the three quotations received, which form part of Annexure-1 series, since the Mukhiya found the quotation given by one M/s. Akshay Enterprises as most suitable hence the matter was placed before the Gram Sabha who gave its approval and whereafter an agreement was entered with the supplier in question with due intimation to the Executive Officer-cum-Block Development Officer. He submits that on 21.7.2011 the Executive Officer-cum-Block Development Officer granted administrative approval to the decision taken by the petitioner and thus there was no occasion for the petitioner to doubt his decision. He submits that if there were guidelines as to the manner in which such purchase is to be made then the same should have been duly intimated by the Executive Officer who gave no such intimation rather while granting administrative approval to the purchase he has clearly mentioned that it is in terms with the Government circular and guidelines. He thus submits that in such circumstances and in absence of any allegation against the petitioner of misappropriation of Government fund, a mere procedural lapse cannot be sufficient for removal of an elected representative under Section 18(5) of "the Act". Mr. Arun Kumar in

support of his submission has relied upon a judgment of the Supreme Court reported in Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, . With reference thereto it is submitted that the issue of misconduct has been discussed in context with elected representatives and a mere casual aberration has been held not to be sufficient to order for his removal.

6. The arguments of Mr. Arun Kumar has been strenuously contested by Mr. Verma, learned Additional Advocate General. The" sum and substance of arguments of Mr. Verma is that since the petitioner has himself admitted to the procedural violation by not inviting open tender and which is a mandatory procedure to be followed under the Bihar Financial Rules hence the order impugned cannot be faulted. It is contended that this act of the petitioner has rendered him unworthy for holding the post of Mukhiya by the Principal Secretary. It is contended that such financial irregularities committed by the petitioner would amount to misappropriation. It was contended that since the issue of misappropriation is yet pending for consideration in the criminal case instituted against the petitioner, hence any order in favour of the petitioner would prejudice the criminal proceedings. It was contended by Mr. Verma that once the petitioner has admitted to the lapse it amounts to misconduct and he cannot thereafter question his removal. Relying upon a judgment of the Supreme Court rendered in the case of Ravi Yashwant Bhoir (supra) Mr. Verma referred to paragraphs 18, 19 and 21 to submit that a nature of misconduct varies from case to case and in so far as the person holding public office is concerned, the moment any lapse committed by such person is found to be detrimental to the public interest it would amount to misconduct. To canvass the same issue Mr. Verma has referred to a Bench decision of this Court reported in Bindeshwar Prasad Vs. The State of Bihar and Others--> . Mr. Verma next referred to a Division Bench judgment of this Court reported in 2014 (2) PLJR 200 (Pancha Devi v. The State of Bihar) and with reference thereto it was submitted that in similar circumstances where the Mukhiya was charged with criminal misappropriation of fund that a removal under Section 18(5) of "the Act" was approved by the Division Bench. He thus submits that in the circumstances existing where the lapse remained uncontested there is no ground for interference with the order impugned.

7. The complainant has appeared through counsel and who also has voiced similar arguments to support the impugned order.

8. I have heard learned counsel for the parties and I have perused the materials on record.

9. The fact that the petitioner did not go for open tender stands admitted. The issue remains whether this violation was in conscious disregard of the Bihar Financial Rules by the petitioner or was a result of ignorance or prescribed procedures. The other issue which would fall for consideration is whether in absence of any allegation regarding misappropriation of public fund against the Mukhiya, any such lapse would be treated as a misconduct or a casual

aberration. Another aspect of the matter is that once the decision taken by petitioner was granted administrative approval by the Executive Officer-cum-Block Development Officer and who also admits that the information regarding the procedure to be followed in such purchase was never given to the petitioner whether the petitioner can be held guilty.

10. The most surprising aspect of the matter is that neither in the complaint of the intervener nor in the FIR or in the impugned order there is even a whisper of misappropriation of funds by the petitioner. Although Mr. Verma has strenuously argued that any order in favour of the petitioner would prejudice the criminal prosecution but what I find from the FIR is that the Block Development Officer has merely charged the petitioner with irregularities in purchase of solar lights and while making such allegation, the petitioner has been sweepingly charged with loot and of committing fraud. The issue is whether the alleged violation of the purchase procedure is by itself reflective of misappropriation of fund by the petitioner or there are materials which support such charge. At least the records do not reflect any such materials nor does the order of the Principal Secretary reflect any such act of the petitioner nor does the order imputes him with misappropriation of public fund. On the contrary the impugned order completely rests on the fact that the petitioner did not observe the Government guidelines.

11. In my opinion, the order impugned is not sustainable on the following grounds:--

"(a) The decision to place the order for purchase of solar lights was taken after obtaining quotations from different suppliers and of the quotations so received, the offer given by Akshay Enterprises was found to be most economical;

(b) The decision to enter into an agreement with Akshay Enterprises is not an individual decision of the petitioner rather is a collective decision of the house which is also reflected in the administrative approval granted by the Executive Officer-cum-Block Development Officer on 21.7.2011;

(c) The decision taken by the Gram Sabha to purchase solar lights from Akshay Enterprises was granted administrative approval by the Executive Officer-cum-Block Development Officer, Goradih on 21.7.2011 and hence there was no occasion for the petitioner to doubt the procedure adopted by him;

(d) The District Magistrate vide letter dated 24.2.2014 has informed the Principal Secretary that the Block Development Officer vide letter dated 6.2.2014 has mentioned that the Panchayat Secretary did not give any information about the purchase procedure to be followed in such matters, to the Mukhiya; and

(e) There is no material on record to support the charge of misappropriation of public fund."

12. In my opinion, the petitioner as per his prudence obtained quotation from different suppliers and since the supplier in question found to be the lowest he placed the quotation before the Gram Sabha who approved of the same.

According to the petitioner, it was a fair procedure adopted by him and which not only was approved by the Gram Sabha but was also granted administrative approval by the Executive Officer-cum-Block Development Officer. In such circumstance, it cannot be held that the decision taken by the petitioner as regards the purchase of solar lights would amount to willful abuse of power or intentional wrong. The fact that the guidelines issued in this regard was never brought to the notice of the petitioner rather his decision was accepted without any objection would only vindicate his stand. In these circumstances, and in absence of any material reflecting misappropriation by the petitioner or that his act was motivated for securing unjust gains or to grant undue benefit to an individual, this single act of aberration is not sufficient for his removal.

13. I am strengthened in my opinion by the observation of the Hon'ble Supreme Court in the judgment rendered in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, thereof is reproduced hereinbelow:--

"11. The expression "abuse of powers" in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is "abuse of his powers or of habitual failure to perform his duties". The use of plural-powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression--"or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exist for a single innocuous action or error of decision."

14. In fact the judgment of the Supreme Court rendered in the case of Ravi Yashwant Bhoir (supra) is a case of misconduct on grounds of non-participation in three consecutive meetings and for committing financial irregularities and paragraphs 63 and 66 thereof completely answers the issue posed in contest and are reproduced hereinbelow:--

"63. Merely not to conduct oneself according to the procedure prescribed or omission to conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some positive intentional misconduct is shown. It was an admitted fact that the meeting had

not been called. However, in the absence of any imputation of motive, not calling the meeting by the appellant could not in itself, be enough to prove the charge.

66. So far as the other charges regarding laying down the pipelines at a much higher rate are concerned, it has been a positive case of the appellant that as the earlier contractor had abandoned the work in between and there was a scarcity of water in the city, the Chief Officer, the Junior Engineer considered the technical aspect and then recommendations were forwarded under the signature of the appellant, the Chief Officer and Junior Engineer to the Council, which ultimately passed the resolution accepting the said tenders. In such a fact situation, it was a collective consensus decision of the House after due deliberations. Admittedly, it was not even the ratification of contract awarded by the appellant himself. Thus, even by any stretch of imagination it cannot be held to be an individual decision of the appellant and the competent authority failed to appreciate that the tenders were accepted by the Council itself and not by the appellant alone. Therefore, he could not be held responsible for acceptance of tenders."

15. For the reasons aforementioned the order dated 23.5.2014 bearing Memo No. 3548 passed by the Special Secretary, Panchayati Raj Department cannot be upheld and is accordingly set aside and as a consequence the petitioner stands restored to the post of Mukhiya, Gram Panchayat Raj, Mohanpur, District-Bhagalpur. The writ petition is allowed.