
(2010) 02 PAT CK 0066
In the Patna High Court

Bijay Shankar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Citation : (2010) 02 PAT CK 0066

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The petitioner was elected Mukhiya of Gram Panchayat Raj, Amarpur under Suryagarha Block in the district of Lakhisarai. He was elected to the post of Mukhiya in June 2006. Under the Bihar Panchayat Raj Act a vote of no confidence cannot be moved against the Mukhiya within the first two years of his assuming office nor can the same be done within one year of the no confidence motion being moved. For moving the no confidence motion charges have to be levelled and disclosed. That is one of the ways of the removal of Mukhiya. But it has a time restriction before which it cannot be done. It seems that there were disputes between the Mukhiya and the Up-Mukhiya. Up-Mukhiya, being in no position to move for removal of the Mukhiya by vote of no confidence, chooses to move the State bureaucracy by making complaints against the Mukhiya. Complaints were basically of two types. One that the Mukhiya is negligent and neglects carrying out work properly in relation to various schemes and secondly that for a certain scheme, Mukhiya had issued a cheque on 16.06.2007 of about Rs. 2 lacs, which was not encashed for four months. On 22.10.2007, the amount was withdrawn by the petitioner but on 31.10.2007 it was deposited. The State Government became active and a special three men Vigilance Committee was appointed to look into the allegations consisting of the Superintendent of Police, a person from the Vigilance Cell and another from Statistical Cell. The Collector was also asked to look into the matter. All reports having been received, show cause was issued to the petitioner, as stated above, on those counts simply stating the negligence in carrying out duty and non-encashment of cheque for a long period and then encashing and re-depositing the amount, which is allegedly suggestive of

embezzlement. Mukhiya filed his show cause. Considering his show cause and the reports, by the impugned order, the State Government has dismissed the Mukhiya in terms of Section 18(5) of the Bihar Panchayat Raj Act, which is quoted hereunder:

(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 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.

[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].
(with emphasis on the relevant part)

2. Counter affidavit has been filed. Heard the parties and with their consent, the writ petition is being disposed of at this stage itself.

3. The challenge to the order of the State Government is on the ground that the conditions contemplated by Section 18(5) are not satisfied. The action of the State itself is an abuse of power. Before advertent to fact in detail, which may really not be necessary, I may notice a judgment of the Apex Court in regards to similar situation being the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, . Here also was the question of removal of the President under the Punjab Municipal Act in terms of Section 22 thereof, which is also to Section 18(5) of the Bihar Panchayat Raj Act. The provisions of the Punjab Act is to be found in paragraph-5 of the said judgment, where also it will be seen that the President could be removed by resignation or by vote of no confidence or by the State Government on grounds of abuse of power and being habitual failure to perform his duties, which is similar to abuse of power and guilty of misconduct in discharge of his duties, as found in the Bihar Statute. The Apex Court has noticed the political bureaucrat relationship. In such matters, the role of bureaucrats and then elaborated what is meant by the abuse of power, as used in the said provision, which discussion, inter alia, is to be found in paragraph-10, which is quoted hereunder:

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 wilful 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 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 exit for a single innocuous action or error of decision.

4. I may also notice one other aspect. The relationship of the Mukhiya and Up-Mukhiya, Pramukh and Up-Pramukh with the State Government is not that of a master servant relationship. They are not paid staff of the State Government. They are elected members. Normally, they are being elected members. It is the House that elects them who first is a chance to see their conduct. It is not in every matter that State bureaucratic interference is called for. These are units of local self-government. Interference has to be in exceptional cases where there is consistent abuse of power or course of misconduct, as indicated by the Apex Court above.

5. Now, we come to the facts of the present case. All that is alleged so far as the first charge is concerned that records were not being maintained properly and he was negligent in supervising the works that surely is neither abuse of power nor guilty of misconduct. The second is that cheque having been issued by the Mukhiya himself, it remained un-encashed for four months, it was then encashed on the 22nd October 2007, and the money re-deposited by the Mukhiya on 31.10.2007, though there is no allegation in the show cause notice as to why and how it was done. In the order finally passed by the State Government, an impression is sought to be created that having come to know that a vigilance enquiry was being done, which vigilance team had visited the Panchayat on 1st October, 2007, the Mukhiya hurriedly deposited the money back. One cannot lose sight of the fact that the money itself was withdrawn much after the vigilance enquiry that is on 22nd October, 2007. From reading of the order of the State Government, it appears that the order has been passed merely because it had to be passed. It has no legs to stand. The order, thus, cannot be sustained and is accordingly set aside.

6. The writ petition is allowed.