
(2007) 09 PAT CK 0020
In the Patna High Court

Enamul Hadwe

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Citation : AIR 2008 Patna 41 : (2007) 4 PLJR 224

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Judgement

Navaniti Prasad Singh, J.—The petitioner is a Mukhiya. He has challenged Annexure-2, a direction given by the Block Development Officer acting as the Executive Officer of the Gram Panchayat directing that as the Mukhiya being an accused in a criminal case is absconding. In his absence, the Upmukhiya would perform the function and duty of Mukhiya. The learned Counsel for the State is present and the learned Counsel for Upmukhiya who has been made a party, has also entered appearance. Parties have been heard and with their consent, this application is being disposed of at the stage of admission itself.

2. Gram Panchayat is a form of Local Self-Government. The Panchayat Samiti is the democratic body which exercises the powers and functions as ascribed to the Panchayat Samiti under the Panchayat Raj Act 2006. On behalf of respondents, it is stated that as a consequence of a non-bailable warrant of arrest issued by competent Criminal Court against the Mukhiya, he is absconding. He is evading arrest and not in a position to attend office or conduct business of the Panchayat Samiti. Accordingly, it is submitted that Block Development Officer, who is the Executive Officer of the Panchayat Samiti, had the authority to direct Upmukhiya to take over the functions of Mukhiya. I am afraid no such power is conferred on the Block Development Officer. Annexure-2 is wholly without jurisdiction. Bureaucracy must learn to keep its hands away from Local Self Government. Once Statute has formed a Local Self Government, defined powers, functions and duties of various statutory authorities therein, laid down procedure for holding meeting exercising functions then the Block Development Officer cannot usurp

authority as a super power under the Local self Government. Learned Counsel for the State refers to an executive circular issued by the State Government in the year 2002 by which Block Development Officer was said to have been conferred with certain powers in matters of Panchayat Samiti. The circular is a dead letter. It cannot be referred to. There is a specific legislation known as Panchayat Raj Act 2006 now which delineates duties, functions and powers of authority. It does not confer the State Government power to issue any such circular. Those circulars may have had some efficacy in the year they were issued but once the said Act has come, they have become dead letters. Now, parties have to function as per law prescribed. Section 17 of the Act defines the power, functions and duties of Mukhiya and Upmukhiya. Sub-section (2) thereof provides that Upmukhiya would perform such duties of Mukhiya as may be and subject to the rules made by the State Government in this behalf delegated to him by order in writing of the Mukhiya. Sub-section (2)(b) of Section 17 provides that during the absence of Mukhiya, the Upmukhiya shall perform all functions and discharge all duties of Mukhiya provided that as soon as Mukhiya returns from absence, he will resume the exercise of such power and shall start performing all functions and discharging all duties. It is submitted on behalf of the Upmukhiya that as Mukhiya is not available as he is absconding, Upmukhiya was bound to take charge. Firstly, the question in this writ application is not whether Upmukhiya is bound to take charge in absence of Mukhiya or not but the question is with regard to the authority of the Block Development Officer to issue the direction. Secondly, the question of Upmukhiya taking over charge in absence of Mukhiya would arise if Mukhiya goes on leave or expresses his inability to perform the work as he is not able to be there. A temporary absence of Mukhiya for any period will not, without power being delegated to him by the Mukhiya, give power to Upmukhiya to assume power of Mukhiya. If what is submitted by the Upmukhiya is to be accepted then if the Mukhiya has a headache on a particular day and is unable to come to office then without anything further, Upmukhiya would assume charge and discharge the duties of Mukhiya. There could be similar illustrations. In my view, that is not the legislative intent, if that is to be accepted then it would lead to disastrous results where everyday, there would be a fight between Mukhiya and Upmukhiya because the moment the Mukhiya stepped out to his office, the Upmukhiya would say that the Mukhiya is absent and he takes over charge as Mukhiya. Such catastrophe is to be avoided by the sane interpretation of the provision and the only sane interpretation is that the Mukhiya. If he expresses his inability to be present, he can delegate his authority to the Upmukhiya or in such a meeting where he absent himself the Upmukhiya can take charge as the Mukhiya but not otherwise.

3. The Upmukhiya further submits that without cause if the Mukhiya remains absent, the work of the Gram Panchayat cannot suffer. To my mind, the answer is provided in the Statute itself. If the Members of the Gram Panchayat think that Mukhiya is causing hindrance in the work of the Panchayat which is not approved by the panchayat then they have the authority and power to call for a meeting or

a special meeting of the Gram Panchayat to consider no confidence against the Mukhiya. If the Mukhiya does not convene such a meeting then again provisions are there. If the Upmukhiya and other members fear that the meeting would not be properly conducted, the meeting having been called, then in terms of Section 157, the District Magistrate has authority to intervene in the matter. The people have to learn to exercise their democratic rights in a lawful manner. Provisions being there and procedure having been prescribed, it is well settled that no other procedure can be adopted and all other procedures would be deemed to be prohibited. This dictum has been repeated by the Courts over and over again.

4. From the provisions of the Act, it is clear that all contingencies have been provided for and, therefore, all parties have to follow the procedure prescribed by law. Block Development Officer may be the Executive Officer but he certainly is not the guardian angel over the elected local representatives. His powers, functions and duties are also specified in the Act and he cannot transgress the same or arrogate to himself powers which the legislature has not conferred on him.

4.1 In that view of the matter, I have no option but to quash the letter of the Block Development Officer (Annexure-2) acting as the Executive Officer and allow the writ application.