

(2002) 11 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 7174 of 2002

Jai Chand Prasad Rai and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 18(5)

Citation : (2003) 1 PLJR 157

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Uma Kant Shukla and Dhananjay Kumar, for the Appellant;
Rajeshwar Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The Petitioners being aggrieved by order dated 3.6.2002 issued by the Collector/District Magistrate, East Champaran at Motihari have come to this Court with complaint that the Collector had no power to seize or suspend the powers of Mukhiya which are conferred upon them under the provisions of the Bihar Panchayat Raj Adhiniyam, 1993. According to them the order dated 3.6.2002 (Annexure-3) is in excess of the jurisdiction conferred upon the District Magistrate and as such the order being bad and as it violates the Principles of Natural Justice, it be quashed.

3. The facts necessary for disposal of this application are that certain complaints were made by the Petitioners to the Collector/District Magistrate that particular fair price shop dealers were engaged in nefarious activities, therefore and as they were not distributing ration in accordance with the policy of the State Government their licence be cancelled. The Collector after receiving the application made an enquiry into the matter and after being thoroughly convinced that the complaint was meritless rejected the application but at the

same time observed that the complaint was based on personal animosity and therefore, the powers of Mukhiya of Gram Panchayat, Pokhra and kotwa be immediately seized. He also observed that the complaints were motivated and were result of ill will. In the show-cause submitted by the Respondents it is contended that (sic-under ?) Clauses 25 and 27 of Bihar Trade Articles (Licences Unification) Order the District Magistrate have absolutely powers to control the fair price shops and as none can interfere with such right of collector, the Collector was within his jurisdiction in passing the order impugned. During the course of the arguments a reference was also made to Sub-section (5) of Section 18 of the Bihar Panchayat Raj Act, 1993 to contend that if a Mukhiya can be removed on the ground of misconduct then Collector, it must be presumed has some powers to clip the powers of the Mukhiya who are acting beyond their jurisdiction and authority.

4. Clause 25 of the Unification Order, 1984 refers to the powers of the State Government, Collector or the licencing authority to issue direction to the dealers with reference to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles.

5. Clause 27 of the Unification Order, 1984 refers to the inherent powers of the Commissioner and Collector.

6. A juxtapose reading of Clauses 25 and 27 would only show that particular officers authorised under Clause 25 or 27 would have particular powers basically qua the dealers and not in relation to any third party. Clause 25 and Clause 27 do not clothe the authority with any power to suspend or seize the powers conferred upon a Mukhiya under Panchayat Raj Act, 1993.

7. Sub-section (5) of Section 18 of the Bihar Panchayat Raj Act says that a Mukhiya may be removed from the office by the Government for his misconduct in the discharge of his duties or neglect or incapacity to perform his duties or for being persistently remissing in discharge thereof or guilty of any disgraceful conduct. A bare perusal of Sub-section (5) of Section 18 would make it clear that these powers have been conferred upon the State Government. The Collector is not the State Government. Under such circumstances, it cannot be held that Sub-section (5) authorises the collector to pass any order against the Mukhiya on the foundation of the alleged misconduct.

8. The direction issued by the Collector seizing the powers of the Mukhiya is beyond his jurisdiction and it has no authority of law behind it. The directions contained in Annexure-3 relating to seizure of powers of Mukhiya of Gram Panchayat, Pokhra and Kotwa is hereby quashed and the show-cause notices issued to them would stand nullified. The petition is allwed to the extent indicated above.

9. A copy of this order be given to learned Counsel for the State within three days.