
(2014) 05 PAT CK 0095

In the Patna High Court

Case No : LPA No.753 of 2013 in CWJ Case No. 4827 of 2012

Jai Kishore Prasad Mandal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Citation : (2014) 3 BBCJ 406

Hon'ble Judges : Navin Sinha and Anjana Mishra, JJ.

Bench : Division Bench

Advocate : Mr. Ranjan Kumar Jha and Mr. Chaudhary Prem Kumar Thakur, Advocates, for the Appellant; Mr. Anil Kr Uapdhyay and Mr. Yashraj Bardhan, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Navin Sinha, J.(Oral)—The present Appeal arises from order dated 23.4.2013 dismissing C.W.J.C. No. 4827 of 2012. The learned Single Judge held that the State Government was competent to pass orders for removal of the Mukhiya under Section 18(5) of the Bihar Panchayti Raj Act (hereinafter called the "Act") after considering the cause shown by the Mukhiya. If the report of the District Magistrate had been made available to the Appellant facilitating the filing of a reply, which he was yet to do, the notice dated 20.1.2012 issued by the Special Officer, Department of Panchayti Raj required no interference.

2. Learned counsel for the Appellant submits that Section 18(5) of the Act was amended in 2008. The power to issue notice to show cause and order removal is now vested in the State Government. He submits that it is only after the prima facie satisfaction of the statutory authority i.e. State Government, a show cause notice is to be issued by the State Government and none other. The power of prima facie satisfaction vested in the State Government by the statute cannot be delegated to the Special Officer. Enclosing the report of the District Magistrate does not tantamount to prima facie satisfaction of the State Government.

3. Counsel for the State submits that the Appellant is yet to file his reply. The show cause notice states that the consideration of the cause shown was to be done by the State Government. No prejudice has been caused to the Appellant to warrant any interference at this stage.

4. If the statute prescribes a particular procedure to be followed only that procedure is permissible and all other modes of performance are strictly forbidden. Under Section 18(5) of the Act, a show cause notice could be given for alleged opinion regarding an abuse of power or misconduct by the Mukhiya, but the foundation for the same is the formation of a prima facie opinion by the statutory authority, i.e. the State Government. The power to form a prima facie opinion cannot be usurped or be delegated to any other authority. Had the notice dated 30.1.2012 stated that based on the report of the District Magistrate a prima facie opinion had been formed by the State Government and the Appellant was then asked to submit his reply, matters may have been different. The Special Executive Officer, Department of Panchayati Raj is not a person authorized under Section 18(5) of the Act to form a prima facie opinion. The show cause notice dated 30.1.2012 is therefore unsustainable in its present form and is set aside without prejudice to the right of the respondents to proceed afresh in accordance with law, if they so deem necessary.

5. The order under Appeal is set aside.

6. The Appeal is allowed.

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