

(1992) 01 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3076 of 1983

Mangal Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 33, 33(2)

Citation : (1992) 2 PLJR 555

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Amrendra Kumar Singh, for the Appellant; Deo Narayan Yadav, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—In this writ application, the Petitioner is aggrieved by the order of the State Government as contained in Memo No. 4084 dated 17th May, 1983 (Annexure 1) by which the Petitioner has been removed from the office of pramukh pursuant to powers conferred u/s 33(2) of the Bihar Panchayat Samiti and Zila Parishad Act, 1961 (hereinafter referred to as the "Act").

2. Admittedly the Petitioner had been elected Pramukh of Ghorasahan Panchayat Samiti (East Champaran). The impugned order has been assailed by the learned Counsel for the Petitioner on issues of malafide as well as improper exercise of jurisdiction vested in the Government. He has also stated that the impugned order has been passed in violation of the principles of natural justice. Section 33 of the Act reads as under:

izeq[k ;k mi & izeq[k gks gVkus ds fy, ljdkj dh "kfDr % ?1? ;fn jkT; ljdkj dh jke esa fdLh iapk;r lfefr dk izeq[k ;k mi & izeq[k] iapk;r lfefr ds lqpk: :i ls lapkyu ds fy, jkt; ljdkj }kjk tkjh fy, x;s bl vf/kfu;e ls lqlaxr funs"kksa dk tku & cw> dj ikyu u djs ;k ikyu djus ls bUdkj djs vFkok lksaih xbZ "kfDr;ksa dk nq#i;ksx djs ;k vius d?kZO;ksa ds ikyu esa dnkpkj dk nks"kh Bgjk;k tk; rks jkT; ljdkj] ;FkkfLFkr

izeq[k ;k mi&izeq[k dks Li"Vhdj.k dk mfpr volj nsxh rFkk bl fo"k; ij ftyk ifj"kn ls lykg ysxh] ;fn mDr lykg ds fy, i= Hkstus dh rkjh[k ls rhl fnuksa ds Hkhrj ftyk ifj"kn dh jk; izkIr gks tk; rks ml ij fopkj djus ds ckn ;FkkfLFkfr] ,sls izeq[k ;k mi&izeq[k dks vkns"k ds tfj, vius in ls gVk ldsxh A

?2? jkT; ljdkj mi & /kkjk ?1? ds v/khu fdlh tkap ds nkSjku esa vkns"k nsdj] fdlh izeq[k ;k mi&izeq[k dks rhl fnuksa ds Hkhrj ;g dkj.k crkus dk volj nsxh fd mlds fo#) eqv?kyh dk vkns"k D;ksa u fn;k tk; A jkT; ljdk mDr izeq[k ;k mi&izeq[k eqv? kyh dh vof/k esa iapk;r ds fdlh dk;Z ;k dk;Zokgh esa Hkkx ysus ds lEcU/k esa Hkh jksd yxk ldsxh A

?3? bl /kkjk ds v/khu vius in ls gVk;k x;k dksbZ izeq[k ;k mi&izeq[k] gVk;s tkus dh rkjh[k ls nks o"kZ rd ds fy, izeq[k ;k mi&izeq[k ds :i esa fQj ls fuokZfpr gksus dk ik= u gksxk A

A reading of the Act shows that the power of removal can be exercised by the State Government only under certain specified circumstances and that too (i) after affording an effective opportunity to the Pramukh or Up-Pramukh of explaining the charges levelled against him and (ii) after obtaining the opinion of the Zila Parishad. After following this procedure, if the Government feels satisfied that the charges against the Pramukh or Up-Pramukh have been proved, then only the State Government can resort to the power of removal.

3. Without addressing to all the issues raised before me, I feel persuaded to quash the impugned order on the simple ground that the State Government has passed the same without recording any conclusive finding in respect of the charges levelled against the Petitioner. It is apparent from "the impugned order that only by recording a prima facie opinion with regard to the charges in question, the statutory power of removal has been exercised against the Petitioner. The drastic power of removal of a duly elected representative of local bodies cannot be exercised in such a casual manner. A statutory authority entrusted with such stringent and drastic powers has to devote himself more before taking the decisions like the one impugned in the present writ application.

4. For the aforesaid reasons. I hereby quash the impugned order. If the State Government, so desires, it will be open on its part, to pass fresh order with regard to removal of the Petitioner by following the mandatory provisions of law and granting an effective opportunity of hearing to the Petitioner.

5. With these observations, the application is allowed. There will be no order as to costs.