
(1994) 12 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 8369 of 1994

Natho Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 18, 18(4)

Citation : (1994) 12 PAT CK 0015

Hon'ble Judges : Nagendra Rai, J;A.N. Trivedi, J

Bench : Division Bench

Advocate : Pramod Mishra, for the Appellant; D.N. Singh, for State and Arun Kr. Jha, for Respondents Nos. 6 to 9, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the counsel for the parties.
2. This application is being disposed of at the admission stage. Originally, the petitioner has filed the present application for quashing the order dated 12.9.1994 passed by the Collector, Madhepura in Gram Panchayat Appeal No. 1/94-95 (Annexure-3) by which he has set aside the order dated 12.8.1994 passed by the District Panchayat Officer to the effect that the No-Confidence-Motion brought against the Petitioner, who is Up-Mukhiya of Chikni Phulkaha Gram Panchayat, has failed. By the said order the Collector has also directed for a fresh election to be conducted by the D.C.L.R., Madhepura for appointment of ad-hoc Mukhia.
3. By the supplementary affidavit, the Petitioner has prayed for quashing the order dated 25.10.1994 by which the District Magistrate has ordered that Respondent No. 6 will act as Up-Mukhia of the aforesaid Gram Panchayat in view of the election of Up-Mukhia in the meeting held on 18.10.1994; a copy of this order dated 25.10.1994 is Annexure-6 to this petition.
4. Respondent No. 6 has also appeared and has filed a counter affidavit.

5. According to the Petitioner, after the death of the Mukhia of the village, late Sri Satya Narain Yadav, he was elected as Mukhia in 1990. When the Chikni Phulkaha Gram Panchayat was bifurcated into two Gram Panchayats, the Petitioner was nominated as Mukhia by the District Magistrate vide Annexure-1. Thereafter, some attempts were made by Respondent No. 6, and Ors. to pass a No-Confidence Motion against the Petitioner, but that has failed in the meeting and the District Panchayat Officer found that the Petitioner was not the Mukhia but Up-Mukhia from before and issued an order dated 12.8.1994 that the Petitioner will continue to work in the same capacity; a copy of this order is contained as Annexure-2. Against the said order, Respondent No. 6 and Ors. went before the Collector, who by the impugned order dated 12.9.1994 (Annexure-3) set aside the order of the District Panchayat Officer and ordered for fresh election, and in pursuance of that election has been held and Respondent No. 6 has been elected as Up-Mukhia and has been recognised as such by the Collector vide Annexure-6.

6. Learned Counsel for the Petitioner has contended firstly that the Collector under the Gram Panchayat Act is not an Appellate Authority to hear appeal against the order passed by the District Panchayat Raj Officer in connection with the "No-Confidence-Motion". Secondly, he contended that the order has been passed by the Collector behind the back of the Petitioner inasmuch as the Petitioner was not noticed before passing the aforesaid order.

7. The parties agree that the Gram Panchayat Raj Act of 1993 is in force and according to the provisions contained in the aforesaid Act, the Collector under the Act is not an Appellate Authority. Section 18 of the Bihar Panphayat Raj Act, 1993 provides for removal of the Mukhia and Up-Mukhia and Sub-section (4) provides that a meeting has to be held for No-Confidence-Motion, which is to be convened and presided over by the District Panchayat Raj Officer. Any decision taken by the District Panchayat Raj Officer in the said meeting is not appellable before the Collector/District Magistrate. In that view of the matter, we are of the view that the order contained in Annexure-3 has no sanction of law, and the Collector exceeded his jurisdiction in intervening with the matter, which is not within his domain. Even assuming for the sake of argument that the Collector had power, it is elementary law that an order which affects a person cannot be passed without affording an opportunity of hearing to the person concerned. Admittedly, the Collector has not noticed the Petitioner before passing the said order. As such on both the grounds the order of the Collector is bad in law. As the order contained in Annexure-3 is bad in law, the meeting held by the D.C.L.R. in pursuance of the order dated 12.9.1994 is also without jurisdiction and as such the meeting as well as the subsequent order of the Collector, as contained in Annexure-6, by which he has treated Respondent No. 6 as Up-Mukhia, are illegal and without jurisdiction.

8. In the result, the orders contained in Annexures-3 and 6 are quashed. As both the orders have been quashed, Respondent No. 6 cannot continue and work as

Mukhia/Up-Mukhia. Accordingly, he is restrained from functioning as Mukhia/Up-Mukhia of the Gram Panchayat in question.

9. As there is a controversy between the parties, we are of the view that some steps should be taken to finally resolve the dispute so that the Gram Panchayat may function properly. Accordingly, we direct the District Panchayat Officer to convene a meeting within one month from today of the members of the Executive Committee to elect the Up-Mukhia, who will function as such.

10. Till the matter is decided by the District Panchayat Officer, the Petitioner, as he was working from before, shall continue to act as Up-Mukhia.

11. The District Magistrate, Madhepura is well advised to confine himself to the duties, which are entrusted to him under the law. He should not consider that he is a king or a free-wheeler, who can move in any direction and pass any order in any, matter irrespective of the fact that he has no jurisdiction to deal with those matters. Because of his unwarranted interference this matter has come to this Court.

12. With the above observations, the application is allowed and the orders as contained in Annexures-3 and 6 are quashed.