
(2011) 03 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 4177 of 2011

Shiv Shankar Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 18(5)

Citation : (2011) 59 BLJR 3369 : (2011) 3 PLJR 77

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard Learned Counsel for the Petitioner and Learned Counsel for the State.

2. The Petitioner is the Mukhiya of Goraul Bhagwanpur, aggrieved by the order dated 10.2.2011 unseating him from the post by the Principal Secretary, Department of Panchayati Raj in exercise of power u/s 18(5) of the Bihar Panchayat Raj Act (hereinafter called the Panchayat Act).

3. Learned Counsel for the Petitioner submits that the installation of the Handpump on private lands was the decision of the Gram Panchayat. The depth of the Handpump was a technical matter to be decided by the Junior Engineer, and the Petitioner has no technical knowledge. No show cause notice was given to the Petitioner by the Principal Secretary, u/s 18(5) of the Act before the issuance of the final order.

4. Learned Counsel for the State finds it difficult to demonstrate from the recitals in the impugned order dated 10.2.2011 that any show cause notice was issued to the Petitioner by the statutory authority. That the statutory authority may have materials before it shall not lend validity to a show cause notice issued on his behalf by his the Monitoring Officer. The show cause notice must be issued by the statutory authority and none other, being the sole repository of the executive powers.

5. The defence of the Petitioner that the depth of the Tubewell was a technical matter better known to the Junior Engineer does not appear to have been raised before the statutory authority but has been contended before this Court for the first time. Likewise the defence of the Petitioner that the location of the Handpumps was decided by the Gram Sabha in absence of proper lands being available finds no consideration in the impugned order.

6. The Court holds that in absence of any recital in the impugned order of a show cause notice issued by the statutory authority and not by another on his behalf, the impugned order is not sustainable on that ground alone. The departmental letter No. 7385 dated 6.9.2010 has not been issued by the statutory authority but by the Monitoring Officer. The impugned order dated 10.2.2011 is set aside on that ground alone. However, in the entirety of the matter it shall not result in any benefit to the Petitioner.

7. If the Petitioner represents before the Principal Secretary within a maximum period of two weeks from today alongwith a copy of the present order, the Principal Secretary, Panchayati Raj Department, may issue him a statutory show cause notice and then proceed to pass final appropriate orders in accordance with law.

8. The writ application is disposed off with the aforesaid observations.