

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23516 of 2019

Hirawati Devi Wife of Yamuna Paswan Resident of Village- Lohdan, Gram Panchayat- Lohdan, Police Station- Chand, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Gram Panchayat Raj Department, Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.
3. The District Panchayat Raj Officer, Kaimur at Bhabua.
4. The Block Development Officer, Chand, District Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shyam Bihari Singh
For the Respondent/s : Mr. Ajay (GA-5)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 08-03-2021

1. The present petition has been filed seeking the following reliefs:-

“1(a). To issue a writ of certiorari or any other writ or writs direction for quashing the order dated 28.10.2019 passed by the Principal Secretary, Panchayati Raj Department, Bihar, Patna (contained in Annexure-8) vide memo no. 7085 dated 05.11.2019 whereby and whereunder the petitioner has been removed from the post of Mukhiya of Gram Panchayat Raj, Lohdan Block-Chand, District-Kaimur at Bhabua for the left over period of Gram Panchayat, on the charge of defalcation of public fund though the defalcated amount alongwith interest has been deposited in the account. It has



also been ordered for recovery of compound interest for the period of defalcated amount was kept by the petitioner holding that the defalcated amount would have been used by the petitioner for her personal use.”

2. The brief facts of the case are that the petitioner was elected as a Mukhiya of Gram Panchayat Raj Lohdan, Block-Chand, District-Kaimur at Bhabua and in the financial year 2016-17, funds were allocated to the Gram Panchayat for implementation of the scheme of “Saat Nischay” wherein funds were to be used for the construction of concrete striate and drainage system as well as for management of drinking water. The fund was transferred to the aforesaid Panchayat whereafter the petitioner is stated to have defalcated a sum of Rs. 33.97 lakhs. A show cause notice was then issued to the petitioner vide Memo dated 10.10.2018 by the District Panchayat Raj Officer, Kaimur, asking the petitioner to submit her show cause reply as to why appropriate action be not taken against the petitioner under Section 18(5) of the Bihar Panchayat Raj Act, 2006 in view of defalcation of a sum of Rs. 33.97 lakhs by her. The petitioner is stated to have then submitted her reply stating therein that by mistake the said amount had been withdrawn, however, it was submitted that a sum of Rs. 35,22,288/- i.e. the principal amount along with the interest thereon, has already



been deposited by the petitioner in the public account. Thereafter, the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna, by the impugned order dated 28.10.2019/01.11.2019, contained in Memo No. 7085 dated 05.11.2019 has been pleased to remove the petitioner from the post of Mukhiya of Gram Panchayat Raj, Lahdan, Block-Chand, District-Kaimur at Bhabua for the left over period on the charge of defalcation of public funds. The learned counsel for the petitioner has submitted that the petitioner is an innocent lady and in fact the Panchayat Secretary had defalcated the amount in question whereupon the petitioner has been made an scapegoat, however, the fact remains that the petitioner has already deposited the alleged defalcated amount along with the interest accrued thereupon, hence a liberal view be taken. It is further submitted, by referring to Section 18(5) of the Panchayati Raj Act, 2006, that the entire actions of the respondents are illegal inasmuch as the said provision of law provides for a system of Lok Prahari, however, the same has not yet been put in place.

3. Per contra, the learned counsel for the State by referring to the counter affidavit filed on behalf of the respondent no. 1 has submitted that the State Government has



framed the Bihar Panchayat (Inspection of Offices & Enquiry into Affairs, Supervision & Guidelines) Rules, 2014 (hereinafter referred to as the 'Rules 2014') and under Rule 4(3) of the said Rules, 2014, the District Magistrate concerned has been vested with the power to enquire into such affairs in which complaints have been received against Mukhiya or Up-Mukhiya or members or Executive Officer of a Panchayat Samiti with regard to non-discharge of functions by them, according to the provisions of the Bihar Panchayat Raj Act, 2006 as also regarding willful disobedience of the directions of the State Government or competent authority and regarding commission of financial irregularities. It is further submitted that by virtue of Section 170 of the Bihar Panchayat Raj Act, 2006, elected representatives of Panchayati Raj institutions are public servant, hence suitable action can be taken against the elected representatives of the Panchayati Raj institutions including the Mukhiya of a Gram Panchayat and in fact FIR can also be registered with the police directly by any person in case a clear cut complaint is made regarding corrupt practices or misappropriation of government money by the Panchayats. It is further submitted that a Mukhiya can be removed by the State Government as per the provisions contained under Section 18(5)



of the Bihar Panchayat Raj Act, 2006. At this juncture, it would be relevant to reproduce herein below Section 18(5) of the Bihar Panchayat Raj Act, 2006:-

“18. Resignation or Removal of Mukhiya or Up-Mukhiya.-
(5) Without prejudice to the provisions under this Act, if, in opinion of the Commissioner having territorial jurisdiction over the Gram Panchayat, a Mukhiya or an Up-Mukhiya of Gram Panchayat absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the [Government] may, after giving the Mukhiya or Up-Mukhiya a reasonable opportunity for explanation, by order, remove such Mukhiya or Up-Mukhiya, as the case may be, from office.

*[The Mukhiya or Up-Mukhiya so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies till further five years from the date of such removal. The Mukhiya or Up-Mukhiya so removed on rest of the charges shall not be eligible for re-election as Mukhiya or Up-Mukhiya or Member of Gram Panchayat during the remaining term of office of such Gram Panchayat],
[***]”*

4. The learned counsel for the respondent-State has further submitted on the merits of the present case that there



were serious and specific allegations against the petitioner, as Mukhiya of the Gram Panchayat Raj Lohdan, Block-Chand, District-Kaimur, of committing gross financial irregularity by way of illegally withdrawing Government funds amounting to a sum of Rs. 33.97 lakhs from the Bank account of Gram Panchayat (A/C No. 73940100064640-Madhya Bihar Gramin Bank), which were kept for execution of Mukhya Mantri Saat Nischaya Yojna and Mukhya Mantri Gali-Nali Pakkikaran Yojna, on different dates, in between 01.06.2017 to 21.10.2017, in complete violation of Government guidelines. The petitioner is also guilty of not transferring due funds into the account of Ward for execution of the Mukhya Mantri Saat Nishchaya Yojna to be implemented through Ward Implementation and Management Committee, which is not only a gross misconduct but is also in complete violation of the government guidelines and set norms, issued from time to time regarding the flow and management of funds for the execution of Mukhya Mantri Saat Nischaya Yojna. The learned counsel for the respondents has further submitted that as per the guidelines issued by the government, any transaction of the funds of Mukhya Mantri Saat Nischay Yojna, upon direction of Mukhiya of a Gram Panchayat, is in violation of the government guidelines/statutes



and is therefore, illegal, even in case the money in question is deposited back in the bank account after its illegal withdrawal. It is further submitted that in view of the statutory provisions/rules, the District Magistrate, Kaimur had made preliminary investigation, whereafter he had issued show cause notices to the petitioner twice i.e. vide letter dated 10.10.2018 and the one dated 06.11.2018, however, the petitioner did not submit her explanation, whereafter charges were framed and recommendation was sent by the District Magistrate, vide his letter dated 07.06.2019, to take appropriate action for removal of the petitioner from the office of the Mukhiya of the Gram Panchayat Raj Lohdan, Block-Chand, District-Kaimur, under Section 18(5) of the Bihar Panchayat Raj Act, 2006. It has been submitted that the power to remove a Mukhiya, under Section 18(5) of the Act, 2006, has been delegated by the Minister of the Panchayati Raj Department to the Principal Secretary of the Panchayati Raj Department and a standing order has been issued to the said effect vide memo dated 12.09.2018. A show cause notice is then stated to have been issued to the petitioner vide Panchayati Raj Department, letter No. 4245 dated 04.07.2019 and the petitioner was asked to be present before the Principal Secretary on 23.07.2019, however, though the



petitioner did not appear personally on the said date but her explanation dated 23.07.2019 was received in the Department and the next date was fixed for 06.08.2019, which was duly communicated to the petitioner, however, on 06.08.2019 also the petitioner did not appear, hence the next date of hearing was fixed for 20.08.2019, which was also duly communicated to the petitioner and on the said date the petitioner had appeared before the Principal Secretary, Panchayati Raj Department, however, the hearing remained inconclusive, hence the next date was fixed for 10.05.2019, with due intimation to the petitioner. On merits, it has been submitted that admittedly the petitioner has embezzled and misappropriated a sum of Rs. 33.97 lakhs, which is clear from the fact that she has deposited the said amount along with interest amounting to a sum of Rs. 1,25,288/-, back into the Gram Panchayat account.

5. It is further submitted that the petitioner, instead of refuting the charge of illegal withdrawal of a sum of Rs. 33.97 lakhs, has only contended that she has deposited the said amount back into the Gram Panchayat account, thus the same proves the fact that the petitioner withdrew the fund in question illegally and with mala fide intention and deposited the same back in the account of Gram Panchayat only after two years,



with a view to escape penal action. It is also submitted that the petitioner has been found guilty of having committed gross financial irregularity, defalcating the government funds, violating the statutory provisions, dereliction of duties and misuse of power for personal gains, hence after the petitioner was provided ample opportunity to put forth her defence, it has been found that the petitioner is guilty of committing gross procedural irregularity and misconduct in discharge of her official duties. It is also submitted that ample evidence is available on record so as to warrant removal of the petitioner from the office of Mukhiya under Section 18(5) of the Act, 2006, hence decision has been taken, at the competent level of the State Government, to remove the petitioner from the office of Mukhiya of Gram Panchayat, Lohdan, Block-Chand, District-Kaimur, resulting in passing of an order under Section 18(5) of the Act, 2006 on 28.10.2019, duly signed by the Principal Secretary, Panchayati Raj Department on 01.11.2019.

6. The learned counsel for the respondent-State has referred to a judgment dated 01.09.2010, rendered by a coordinate Bench of this Court in the case of *Bindeshwar Prasad vs. The State of Bihar & Ors.*, passed in CWJC No. 9374 of 2010, Paragraph nos. 9 to 17 whereof are reproduced



herein below:-

- “9. *Learned counsel for the petitioner also averred that the Supreme Court in case of Sharda Kailash Mittal (supra) had clearly held that holder of office,being democratically elected office bearer, his removal from office,which is an extreme step,must be resorted to only in grave and exceptional circumstances and not for minor irregularities, especially when the action of removal castes a serious stigma on personal and public life of office bearer concerned and may even result in his disqualification to hold office for the next term. Hence, learned counsel for the petitioner prayed that the impugned action of the authorities is directly in the teeth of the said decision of the Apex Court.*
10. *On the other hand, it is claimed on behalf of the respondents that the then Panchayat Secretary of Basantpur, Gram Panchayat gave written application to the then District Magistrate, Chhapra supported by an affidavit clearly stating that the Mukhiya (petitioner) after forging his signature had withdrawn money of 52 beneficiaries of Indira Awas Yojna and on information, the Block Development Officer was not taking any action against him. It is also averred that the Panchayat Secretary had categorically stated that the Mukhiya (petitioner) had realised Rs.15,000/-from each beneficiary and had also stated that the Block Development Officer had also received money in the said transaction.*
11. *It is further stated by learned counsel for the respondents that the facts of the case clearly*



disclosed that the Panchayat Secretary recommended names of only few beneficiaries, but the petitioner named 53 beneficiaries after forging the signature of the Panchayat Secretary and the beneficiaries in collusion with the Government officers and out of them 4 beneficiaries came forward to give statement during inquiry against the petitioner, whereas rest were all fake persons. Hence, action taken against the petitioner is quite legal and justified.

- 12. It was also stated by learned counsel for the respondents that show cause notice and sufficient opportunities were given by the District Magistrate as well as by the Panchayati Raj Department, Govt. of Bihar, Patna to the petitioner to place his case and the petitioner submitted his show cause before the concerned authorities, considering which final order was passed by the Panchayati Raj Department, which is under challenge in the instant writ petition.*
- 13. It is further averred that Section 18(5) of the Act gives ample power to the authorities to take such steps after observing due process of law and it is quite apparent from the record that the authorities concerned had adopted the proper procedure in accordance with law and only thereafter had passed the impugned order. Hence, the authorities concerned have not committed either any illegality in law or any irregularity in the procedure while passing the impugned order.*
- 14. Considering the entire facts and circumstances of this case as well as the pleadings of the parties and the materials on record, it is quite apparent that at first the District Magistrate and thereafter*



the Panchayati Raj Department had taken all due steps in the matter and impugned order had been passed after fulfilling all the formalities, including issuance of show cause notice to the petitioner and also after considering the show cause of the petitioner. Merely by showing a report of the investigating officer in the criminal case the petitioner cannot prove that the entire proceeding adopted by the authorities was illegal and baseless. In the said circumstances, this court does not find any illegality or irregularity in the process adopted by the authorities concerned.

15. *Furthermore, it is quite apparent that inquiries were made in which it was specifically found that some of the beneficiaries appeared and gave their statements supporting the allegation against the petitioner, whereas with respect to the remaining beneficiaries, it was found that they were fake persons. This was a very serious allegation against the petitioner who was the Mukhiya of the Gram Panchayat, but his action was detrimental to the interest of the people of the Gram Panchayat which he represented. Hence, it is quite apparent that he not only committed grave illegality, but also eroded the confidence of the people who had elected him as their Mukhiya.*
16. *So far the decision of the Apex court relied upon by the petitioner in case of Sharda Kailash Mittal (supra) is concerned, it is quite apparent that the petitioner had not committed any minor irregularity, rather he had committed a very serious illegality detrimental to the system of Panchayat Raj and basic democracy itself.*



Furthermore, the allegations having been well proved as is apparent from the impugned order as well as inquiry report and the communications of the District Magistrate and other materials available on record, the authority concerned was quite justified in passing the impugned order against the petitioner.

17. Accordingly, this court does not find any illegality in the impugned order nor does it find any merit in this writ petition which is, accordingly, dismissed."

7. I have heard the learned counsel for the parties and gone through the materials on record, from which it is apparent that there is no procedural irregularity so as to warrant interference with the impugned order dated 28.10.2019/01.11.2019, passed by the Principal Secretary, Panchayati Raj Department, Bihar and in fact the petitioner has failed to demonstrate any procedural irregularity, having been committed by the respondents, leading to passing of the aforesaid order under Section 18(5) of the Act, 2006. This Court further finds that merely because the system of Lok Prahari, as provided for under Section 18(5) of the Act, 2006, has not been put in place, the respondent authorities shall not be denuded of the power, vested under Section 18(5) of the Act, 2006, to remove a Mukhiya from office. In the present case it is apparent from the records as also from the impugned order



passed by the learned Principal Secretary, Bihar Panchayati Raj Department that the petitioner has been found guilty of misconduct in discharge of her duties as also has been found guilty of misappropriating the funds of the Panchayat in question and after providing a reasonable opportunity to the petitioner to furnish her explanation, apart from providing opportunity of personal hearing, the impugned dated 28.10.2019 /01.11.2011 has been passed by the Principal Secretary, Panchayati Raj Department, Bihar, Patna, hence this Court does not find any infirmity in the said order dated 28.10.2019/01.11.2019, passed by the learned Principal Secretary, especially in view of the admission by the petitioner of having defalcated the said sum of Rs. 33.97 lakhs, which is apparent from the fact that she had deposited back the said amount along with interest in the account of the Gram Panchayat, after a lapse of two years, and that too only with a view to escape penal action under the law. The impugned order dated 28.10.2019 /01.11.2019, in any view of the matter, is a well reasoned, legal and a self speaking order and the petitioner has failed to demonstrate as to how the impugned order dated 28.10.2019/01.11.2019, passed by the learned Principal Secretary, Panchayati Raj Department, Bihar, Patna and the



grounds mentioned therein for removal of the petitioner as a Mukhiya, are perverse and inapposite, hence I do not find any reason to interfere with the impugned order dated 28.11.2019, thus the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22.05.2021
Transmission Date	

