

Sarita Devi Vs State Of Bihar**Civil Writ Jurisdiction Case No. 4888 Of 2021**

Court: Patna High Court**Date of Decision:** Sept. 29, 2021**Acts Referred:**

Bihar Panchayat Raj Act, 2006 " Section 18(5), 152

Hon'ble Judges: Anil Kumar Sinha, J**Bench:** Single Bench**Advocate:** Shashi Bhushan Kumar Manglam, Satya Vrat**Final Decision:** Disposed Of

Judgement

1. The petitioner, who, at the relevant point of time, was the Mukhiya of Gram Panchayat Raj East Soren, under the Makhdumpur Block, in the district

of Jehanabad, has filed the present writ application, for quashing order, dated 14.12.2020, passed by respondent no. 2-the Additional Chief Secretary -

cum-Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna, whereby the petitioner has been removed from the post of the

Mukhiya, Gram Panchayat Raj East Soren, in exercise of power conferred upon the State Government, under Section 18 (5) of the Bihar Panchayat

Raj Act, 2006 (herein after referred to as the "2006 Act") with further direction to the District Magistrate, Jehanabad, to take steps for recovery

of the alleged misappropriated amount from the petitioner as well as the Panchayat Secretary, under the Bihar and Orissa Public Demand Recovery

Act. The further prayer of the petitioner is for a direction to the respondent authorities to reinstate her on the post of Mukhiya of the Gram Panchayat

Raj East Soren.

2. The brief fact, involved in the present writ application, is that the District Magistrate, Jehanabad, vide letter no. 1266, dated 07.12.2018,

recommended initiation of proceeding under Section 18 (5) of the 2006 Act against the petitioner to the Department of Panchayati Raj, on the basis of

the allegation that the petitioner, in the capacity of Mukhiya, has withdrawn a sum of Rs. 54,60,000/- from the account of the Gram Panchayat in

illegal manner for execution of the schemes under the Mukhyamantri Sat Nischaya Yojana in violation of the Government instruction/ circulars, issued

vide Memo Nos. 5751 and 5752, dated 30.06.2017. The charges, along with supporting evidence, were served upon the petitioner, vide letter no. 131,

dated 04.01.2019, requiring the petitioner to submit her defence upon the charges levelled against her.

3. In reply to the said show cause, dated 15.01.2019, the petitioner stated that the wards were selected for the execution of the scheme by the Aam

Sabha of the Gram Panchayat and the same was also approved in the meeting of the Executive Committee and accordingly, the concerned Junior

Engineer was directed to prepare the estimate of the selected schemes and place the same before the petitioner for its approval. The Junior Engineer,

thereafter, prepared the estimate of the scheme and placed it before the petitioner for technical approval. After the technical approval given by the

petitioner, the concerned records were sent to the Block Development officer, Makhdumpur, for administrative approval and the Block Development

officer, Makhdumpur, granted administrative approval of the schemes on 21.05.2017 and it was communicated to the petitioner, vide letter no. 110,

dated 21.05.2017 (Annexure-1 series).

4. It has further been stated by the petitioner that in view of Government instructions, the Executive Agent of all the schemes was the Panchayat

Secretary and, accordingly, the Panchayat Secretary moved a proposal with agreement paper before the petitioner and the petitioner issued the work

order after accepting the agreement on 01.06.2017, for which the file was placed before the petitioner with administrative approval of the Block

Development officer, Makhdumpur, and for the purpose of the execution of the work, advance amount was sanctioned by the petitioner in favour of

the Panchayat Secretary, and after receipt of the advance amount, the Panchayat Secretary proceeded with the execution of the work and completed

the work of Scheme Nos. 1 to 4 of 2017-18 and the final measurement thereof was already taken by the Junior Engineer on 20.05.2018 and the same

was counter signed by the Assistant Engineer also on 16.08.2018.

5. The further defence of the petitioner was that insofar as the work of Scheme Nos. 5 to 8 are concerned, though the materials were brought to the

site for construction from the advance amount received by the Panchayat Secretary and the same were about to be started, but in view of the

ordinance of the State Government, contained in Bihar Ordinance 01 of 2017, amending certain provisions of the 2006 Act, published on 08.06.2017,

and the notification, regarding the Rules framed therein, published on 28.06.2017, the Block Development Officer asked the petitioner to stop the work

of all other schemes, which were yet to begin, for which construction materials were brought on the site by the Panchayat Secretary and, accordingly,

the work of Scheme Nos. 5 to 8 were stopped and the Panchayat Secretary, on the direction of the petitioner and the Block Development officer,

returned the advance amount received by him for the Scheme Nos. 5 to 8 of 2017-18 and deposited the same in the account of the Gram Panchayat.

6. The petitioner further stated, in her reply to the show cause, that the total estimated cost of the Scheme Nos. 1 to 4 of 2017-18 was 35,79,700/- and

the cost incurred over the work already completed was Rs. 35,73,907/-, against which, a sum of Rs. 32,60,000/- was drawn and the Panchayat

Secretary was yet to receive Rs. 3,13,907/-. It was also stated that after the amendment in the 2006 Act, no work was to be done by the Panchayat

Secretary and the amount was also deposited in the account of the Gram Panchayat. It was only those four works, which had already begun after

01.06.2017, were completed by the Panchayat Secretary.

7. The petitioner relied upon the letter, dated 12.05.2018, submitted before the District Magistrate in reply to the star question in 188th Sessions of the

Legislative Council by the Block Development Officer, in which the Block Development Officer has specifically stated that no Government money

has been misused in execution of the Scheme.

8. The petitioner also contended that First Information Report has been lodged against the petitioner bearing Makhdumpur Police Station Case No. 394

of 2018, on the basis of the written report of the Block Development Officer, alleging therein that a sum of Rs. 54,60,000/- was directly withdrawn by

the Panchayat Secretary and a sum of Rs. 22,00,000/- was later on deposited by him in the account on 07.02.2017, but he has not returned a sum of

Rs. 32,60,000/-, despite direction issued in this regard vide letter no. 922, dated 29.06.2018.

9. After the explanation submitted by the petitioner, on 15.01.2018, the respondent no. 2, vide letter no. 451, dated 18.01.2019, sought the comment

upon the explanation from the District Magistrate, Jehanabad, which was received by the Department on 25.03.2019, vide letter no. 463, dated

20.03.2019 from the District Magistrate, Jehanabad. The opinion of the District Magistrate, Jehanabad, was served upon the petitioner vide letter no.

4393, dated 12.07.2019, calling upon the petitioner to submit her reply upon the comment of the District Magistrate, Jehanabad, and in response

thereof, the petitioner filed her reply before the respondent no. 2. Thereafter, the respondent no. 2 passed the order on 07.08.2019, by which the

petitioner was removed from the post of Mukhiya of the Gram Panchayat Raj East Soren.

10. The file was placed before the Minister-in-Charge, who directed enquiry in the matter by the Divisional Commissioner, Magadh Division, Gaya, on

the issue raised by the petitioner that action under Section 18 (5) of the 2006 Act was taken only against her; whereas in Makhdumpur block, some

other Mukhiyas have also withdrawn the amount for execution of the work under the Scheme, as per the direction of the Block Development Officer,

but no action was taken against them. Upon direction of the Minister-in-Charge, the matter was sent for enquiry before the Divisional Commissioner,

Magadh Division, Gaya, who submitted his report to the respondent no. 2, vide letter no. 767, dated 31.07.2020. After receipt of the report of the

Divisional Commissioner, Magadh Division, Gaya, and without serving a copy of the same upon the petitioner, the impugned order, dated 14.12.2020,

has been passed and the petitioner has been removed from the post of Mukhiya of the Gram Panchayat Raj East Soren for the rest of the tenure.

11. Per contra, the State, in its counter affidavit, stated that for the purpose of implementation of the Mukhyamantri Sat Nishchay Yojana, the State

Government had issued instruction vide letter no. 463, dated 23.09.2016 that the schemes will be executed by the Ward Development Committee, but

this Court, by order, dated 17.05.2017, passed in CWJC No. 19591 of 2016, has set aside the guidelines and thereafter the State Government issued

instructions that for the selection, administration and technical approval of the schemes of Mukhyamantri Sat Nishchay Yojana, direction will duly be

released separately and there was no order of the State Government that the Mukhiya could directly withdraw the amount of the schemes under the

Mukhyamantri Sat Nishchay Yojana, but the petitioner withdrew the amount of the scheme in question in violation of the Government

instruction/order/circular. It has also been stated that the administrative approval granted by the Block Development Officer does not mean that the

Mukhiya can execute the work of the schemes on his/her level. The statement made by the petitioner that final measurement was taken by the Junior

Engineer on 15.08.2019 and was counter signed by the Assistant Engineer also on 16.08.2019 has been denied in the counter affidavit and stated that

in fact, no final measurement has been taken by the concerned Junior Engineer up till now.

12. It has further been stated that the Principal Secretary, Panchayati Raj Department, issued letter no. 3328, dated 15.06.2018, addressed to all the

District Magistrates with a direction that in course of enquiry, if it is found that for execution of schemes under the Mukhyamantri Sat Nishchay

Yojana, the amount has not been transferred to the Ward Implementation and Management Committee of the Gram Panchayat and the amount has

been withdrawn by the Mukhiya/Panchayat Secretary, then it would amount to misappropriation of fund and if any such matter comes to light, in that

case, the Block Development Officer would submit a written report before the District Magistrate and the amount withdrawn by the

Mukhiya/Panchayat Secretary would be directed to be deposited in the concerned bank account and the action would be taken in this regard against

the Mukhiya under Section 18 (5) of the 2006 Act as well as the Block Development Officer would lodge First Information Report and would also

initiate proceeding under the Bihar and Orissa Public Demand Recovery Act for realization of the misappropriated amount.

13. Accordingly, the Block Development Officer vide letter no. 922, dated 29.06.2018, issued notice to the Mukhiya/Panchayat Secretary, calling upon

them to deposit the amount, as withdrawn by them and thereafter second notice, vide letter no. 956, dated 04.07.2018, was issued to the petitioner and

the third notice, vide letter no. 1007, dated 17.07.2018, was also issued against the petitioner, but the petitioner did not deposit the withdrawn amount

back and as such, First Information Report (Makhdumpur Police Station Case No. 394 of 2018) was lodged by the Block Development Officer

against the petitioner and the present proceeding, under Section 18 (5) of the 2006 Act, was also initiated.

14. Mr. S. B. K. Manglam, learned Counsel for the petitioner, argued that the impugned order has been passed in violation of principle of natural

justice inasmuch as the enquiry report of the Divisional Commissioner, Magadh Division, Gaya, relied upon by the respondent no. 2 was not served

upon the petitioner and further that Section 18 (5) of the 2006 Act cannot be resorted to as a composite proceeding for removal of the Mukhiya on the

charge of being found guilty of misconduct in the discharge of duty and for other charges inasmuch as the State Government has to conduct a

separate proceeding for establishing guilt of misconduct.

15. Learned Counsel for the petitioner, in course of argument, submits that the impugned order has already taken effect and, now, the tenure of the

Mukhiya has come to an end and fresh notification has been issued by the State Government for election of Mukhiya, but the petitioner has

apprehension that respondents may render the petitioner disqualified to contest the election on the ground that the petitioner has been removed from

the post of Mukhiya on the charge of misconduct.

16. Learned Counsel next submits that proviso to Section 18 (5) read with Section 152 of the 2006 Act provides for appointment of Lok-Prahari and

the institution of Lok-Prahari has not been made operational for nearly a decade. Accordingly, a co-ordinate Bench of this Court has passed the order,

in CWJC No. 7095 of 2020 and analogous case, in similar circumstances and has held that since the institution of Lok-Prahari has not been made

operational for 10 years, the removal of Mukhiya on the ground of misconduct, under Section 18 (5) of the 2006 Act, shall not operate as

disqualification to contest the election.

17. Mr. Satya Vrat, learned Assistant Counsel to Government Pleader No. 10 appeared for the State, on the other hand, argued that Government

instruction to get the work of Mukhyamantri Sat Nishchay Yojana executed by the Ward Implementation and Management Committee was made

applicable with effect from 30.06.2017 and despite the same, a huge amount was withdrawn by the petitioner, on different dates, which shows the bad

intention of the petitioner.

18. Learned Counsel for the State further submits that the petitioner was given opportunity to defend herself and she also participated in the

proceeding before the respondent no. 2 and submitted her explanation to the show cause as well as reply upon the comments of the District

Magistrate. The petitioner, in her explanation/reply, has accepted that pursuant to the administrative approval granted by the Block Development

Officer, the amount in question was withdrawn and the works under the Scheme were executed through the Panchayat Secretary and on the basis of

the direction of the Block Development Officer, a sum of Rs. 22,00,000/- was deposited back in the account of Gram Panchayat.

19. Learned Counsel for the State further submits that the contention of the petitioner that the order has been passed in violation of principle of natural

justice is not correct and from the impugned order itself, it would be evident that the petitioner was given opportunity to defend herself properly and

with regard to non-service of the copy of the enquiry report submitted by the Divisional Commissioner, Magadh Division, Gaya, he submits that the

petitioner was also present during enquiry and the Enquiry Committee came to the finding that in public interest, the petitioner executed the work of

Scheme Nos. 1 to 4, but the execution was not done in accordance with the instruction/order of the Panchayati Raj Department and the Panchayat

Secretary received the amount of the schemes in his account; whereas the amount provided for the scheme was required to be deposited in the

account of Ward Implementation and Management Committee, which was made the executing agency of the various schemes and accordingly, the

Mukhiya (petitioner) has violated the circulars/ directions of the Panchayat Raj Department. He submits that the amount withdrawn by the petitioner

with the help of the Panchayat Secretary is not disputed and the petitioner was present during the course of enquiry, which would be evident from the

enquiry report itself, as such, no prejudice has been caused to the petitioner.

20. Learned Counsel for the State further submits that the respondent no. 2, before passing the impugned order, dated 14.12.2020, has also given

hearing to the petitioner, as such, there is no violation of principle of natural justice and the order has rightly been passed under Section 18 (5) of the

2006 Act inasmuch as respondent no. 2 has come to the definite finding that the petitioner has deliberately violated the instructions/circulars of the

State Government and with bad intention, paid the amount to the Panchayat Secretary instead of getting the work executed through Ward

Implementation and Management Committee, which shows the misuse of power by the Mukhiya and action of the Mukhiya comes under the purview

of misconduct in discharge of duty.

21. I have heard learned Counsel for the parties concerned and have gone through the materials available on record carefully.

22. In view of the submission made by learned Counsel for the petitioner that the order of removal of Mukhiya has already taken effect and the tenure

of the Mukhiya has also come to an end, and a fresh election has been announced, accordingly, I refrain myself from expressing any opinion upon the

validity of the impugned order, dated 14.12.2020.

23. A co-ordinate Bench of this Court, in CWJC No. 7095 of 2020 and analogous case, has held as follows:

“Considering the fact that the institution of Lok Prahari has not been made operational for ten years, the Court hereby declares that removal of

Mukhiya on the ground of misconduct under Section 18(5) of the Bihar Panchayati Raj Act shall not operate as disqualification to contest election.

24. Accordingly, taking into consideration the order passed by this Court in identical matters, I come to the conclusion that removal of the petitioner on

the ground of misconduct, under Section 18 (5) of the 2006 Act shall not operate as disqualification to contest the future election.

25. This application is disposed with the aforesaid observations and directions.