

(2012) 11 PAT CK 0072

Patna High Court

Case No: CWJC No. 9384 of 2011

Rajesh Kumar Manjhi @ Shiv
Charan Manjhi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 27, 2012

Acts Referred:

- Bihar Panchayat Raj Act, 1947 - Section 136, 18(5)

Citation: (2013) 2 PLJR 100

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Advocate: Rajeev Kumar Verma and Umesh Kumar Mishra, for the Appellant; Sudhir Kumar for State, Amit Shrivastava, Girish Pandey for the State Election Commission and Mr. Shashank Shekhar Jha for the Intervenor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Petitioner was elected as a Mukhiya of Gram Panchayat Raj Fulwaria, Block Maker in the district of Saran, in the year 2006. This term ended in the year 2011. He was re-elected on 23.5.2011 and also took oath of office on 26.6.2011 but as it is said, his past came to haunt him as would be evident from the allegation and the decision, which has come to visit him and is under challenge in the present writ application. First order under challenge is the order dated 24.5.2011 passed by the Principal Secretary, Panchayati Raj, Government of Bihar (Annexure-13) and thereafter the consequential order passed by the State Election Commission, which is dated 23.8.2012, contained in Annexure-26. By virtue of the two decisions, the petitioner is being debarred from continuing as a Mukhiya as according to the State, he stood disqualified in terms of a decision taken by the competent authority in exercise of

power u/s 18(5) of the Bihar Panchayat Raj Act, which is quoted hereinbelow:--

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.

By an amendment the power was subsequently vested in the State Government i.e. the Principal Secretary, Panchayati Raj instead of the Divisional Commissioner. The corresponding order contained in Annexure-26 has been passed in exercise of power by the State Election Commission in terms of Section 136 of the Bihar Panchayat Raj Act.

2. Learned senior counsel representing the petitioner raises objection on the legality and the correctness of the findings given by the Principal Secretary as well as the legal question whether any act of omission or commission committed by him, during his earlier term and tenure will make him ineligible to hold the office on his re-election and whether an order was required to be passed after the petitioner had already been returned to office on reelection, which effectively meant that it was curtains on his earlier term as a Mukhiya.

3. Some basic facts are required to be taken note of for proper appreciation as to the origin of the present dispute. One Punam Kumari was appointed as a Shiksha Mitra on 10.5.2005. That appointment was made during the tenure of the predecessor of the present petitioner. She ran into certain difficulty in matters of her payment because allegation came to be made that the said Punam Kumari was not rendering service in the school to which she was appointed and she continued to work according to her convenience at an institution to which she was not deputed. Reason for non-payment was as above. However, this was seriously contested by Punam Kumari and she approached the High Court by filing CWJC No. 9040 of 2008. Writ was decided in her favour vide order dated 16.3.2009. A copy of

the order is Annexure-R/5 to the writ application. It is the stand of the senior counsel for the petitioner that he did honour the order of the High Court, even before a contempt was filed. Payment was released in compliance of the judicial direction. However, certain vested interest continued to raise a bogey of non-compliance and made certain allegations against him which instigated the District Magistrate to write a letter to the Principal Secretary of Panchayati Raj, Government of Bihar, primarily alleging two things. The concerned complaint of the District Magistrate is Annexure-10 to the writ application and is dated 4.1.2011. The first allegation was that due to ill will and motive, the petitioner refused to implement the order of the High Court passed in CWJC No. 9040 of 2008 and that the petitioner included names of his wife, mother and other family members in the BPL list. Both the acts of the petitioner, therefore, amounted to either misuse of power vested in him or may be misconduct, which was required to be looked into or investigated.

4. Taking cognizance of the letter of the District Magistrate and after hearing the petitioner and other respondents, the impugned order contained in Annexure-13 came to be passed. The final finding given by the Principal Secretary is that non-payment of emoluments to the Panchayat Teacher and inclusion of the names of the family members in the BPL list by the Mukhiya was a breach of Section 18(5) of the Panchayat Raj Act and, therefore, he stands removed from the post of Mukhiya.

5. It is significant to note that this order has come exactly one day after the petitioner was declared successful in the second term of his election. The declaration of result was on 23.5.2011. Subsequent order contained in Annexure-26 passed by the State Election Commission has the effect of disqualifying the petitioner from not only holding the post of Mukhiya on his return but also keeping him out of office for the next five years.

6. Learned senior counsel tries to point out loopholes in the reasoning and finding which has come about in the decision contained in Annexure-13. He submits that even prior to any order being passed in the writ of Punam Kumari, he had already made payment of her of arrears. Thereafter, payment from time to time has been made in her favour on about four different occasions beginning 25.2009 till 8.2.2012. The reason for payments in part or over a period of time is release of fund and availability of money in this regard. He seriously denied that there was any motive or ill will or that he was misusing his power and position as a Mukhiya to deny salary to Punam Kumari in defiance of any judicial order much less of the High Court. It is also his contention that there are adequate materials available on record to show that what was alleged against Punam Kumari was not in the abstract. There are reports of the subordinate and local authorities of the Education Department to show that there were certain issues, which Punam Kumari had to answer to and this prevented release of money in her favour. It is another matter that the High Court did intervene on her behalf and a clear direction was given for payment of arrears,

which settled the matter. Despite such findings, the petitioner by virtue of being the Mukhiya of Gram Panchayat took steps for payment. Some payment made earlier was also taken note of by the High Court in its order.

7. If this is the position on the first allegation then obviously, the Principal Secretary has glossed, over certain vital facts and not taken the contention or stand of the petitioner with regard to payment to Punam Kumari. He holds the petitioner guilty on the ground that he did not tender any evidence of payment when he was heard. Question, which arises for consideration, is that when an assertion was made, was it not the duty of the Principal Secretary to verify from Punam Kumari or authorities whether such payment has been released or made as asserted by the petitioner or was it a deliberate misstatement. It is clear from reading of the order that non-payment was seriously made an issue but still the finding has gone against the petitioner. This has formed one of the grounds for his removal. In the opinion of this Court, that part of the finding given by the Principal Secretary, *per se*, is erroneous and contrary to records and accepted position.

8. The other allegation of abuse of office is that he had got his family members included in the BPL list, it may be a serious matter if it is debated dispassionately on a public platform as to what ought to be the conduct of an elected representative. But do we maintain such high standards. The Court has to consider whether this omission was so serious which makes the petitioner vulnerable and can be termed as misuse of office. There is no clear finding as to when the family members of the petitioner were included in the list of BPL though there is assertion on the part of the petitioner that when he came to know about such an allegation being made or talked about, he immediately took steps by filing application before the Sub-divisional Officer for deletion of those names. Ultimately, the names have been deleted by the order of the SDO, Chapra as would be evident from Annexure-27. What is significant is that the petitioner belongs to a category where he or his family members could be entitled to be included in the BPL list before his election. They could have been disentitled after reaching the present status. It is apparent from the reading of the materials on record that the petitioner belongs to Scheduled Caste and he has acquired status in life, probably after being elected as a Mukhiya from a reserved constituency of a Gram Panchayat.

9. If the abuse of office and the manner in which certain elected representatives perform in public domain is taken into consideration, the inclusion of the names of the family members of the petitioner in the BPL list, which anyway has now been removed, cannot be said to be of such a high order of indiscretion which should be treated within the meaning of misuse or misconduct in discharge of his duty, which should disentitle him from holding the office of a Mukhiya on return to the office on re-election.

10. The Court, therefore, comes to a considered opinion that the Principal Secretary has passed an order without applying his mind to the factual and actual state of

affairs and, therefore, Annexure-13 is required to be quashed and is quashed.

11. Attention of the Court has also been drawn to the decision of a learned Single Judge rendered in the case of Dinesh Pandey vs. the State of Bihar & Others, reported in 2010 (3) PLJR 149. The ratio of the said decision is reflected in paragraph 5 of the said decision, which is quoted hereinbelow:--

5. A reference to Section 18(5) of the Act shows that the Mukhiya, who abuses his power as a Mukhiya, would be removed from the post of Mukhiya. Here, the Mukhiya who abused the power ceased to be Mukhiya on the term of Gram Panchayat having come to an end. Once he ceased to be the Mukhiya on the term already expired, he could not be removed because he ceased to exist. One cannot be permitted to flog a dead horse. The tenure having ended, the position of Mukhiya having ended. The power u/s 18(5) of the Act could not be exercised with regard to that dereliction. Presently, he is Mukhiya on a fresh oath which he subscribed in 2006 for the fresh term and there is no dereliction in respect thereof. The premise is a Mukhiya can be removed from the Post of Mukhiya if he is a Mukhiya and, as such, had committed a dereliction. That is not available in the present case. All the powers that the State had u/s 18(5) of the Act expired with the expiry of the term. These proceedings were not initiated even prior to 2006 election.

12. The above proposition of law which has been declared by the learned Single Judge is the settled position on the point and can have some reflection on the present set of facts and the question which has been raised.

13. The Court intentionally does not express any opinion on the contention of the respondents whether that judgment is in absolute terms because it has taken note of certain set of facts and circumstances including the kind of omission and commission which has been talked about in Section 136(1) read with Section 18(5) of the Panchayat Raj Act as well as the constitutional provision talked about in Section 136 of the Act.

14. The stand of the State is that the findings have come on the basis of certain enquiry or recommendation of the District Magistrate. The Principal Secretary has acted upon the same after giving an opportunity of hearing to the parties to the dispute. These are serious findings which must have serious consequences for the petitioner and there is nothing illegal about the order.

15. With due respect to the learned counsel for the State, the power vested in the Principal Secretary is not an executive power but a quasi judicial one created by statute which has significance in matters of such dispute, where continuance of a duly elected public representative is put to peril by such adjudication by the said authority. The authorities vested with such responsibility must not act as if they are deciding the fate of a government servant or an ordinary citizen. They cannot go only on recommendation or inputs provided by the District Magistrate. It is an independent hearing where all aspects of the matter must be evaluated and

findings must emerge on the basis of materials produced before him and not any official communication here or there.

16. The Court gets a feeling in the present case after going through Annexure-13 that the mindset of the executive authority, which has passed the order, has not changed while deciding such issue and the judicial part of adjudication is missing in the order contained in Annexure-13. The Court would like to remind the Principal Secretary that in future, he must understand that he is not adjudicating such dispute in exercise of power u/s 18(5) of the Panchayat Raj Act as the Principal Secretary of the Department but as a nodal officer of the State having been vested quasi judicial power to adjudicate.

17. Counsel representing the State Election Commission supports the order passed by the State Election Commission, contained in Annexure-26. The legal submissions made at the Bar are not required to be delved into or taken note of for the simple reason that the power vested in the State Election Commission is not in dispute. The statute provides for the same and whenever materials of such kind emerge, they have to exercise power strictly in accordance with ambit and situation envisaged under the statute u/s 136. However, in the present case reading of the order contained in Annexure-26 is only a narration of the findings given by the Principal Secretary which has already been held to be bad for many a reasons indicated in the earlier part of the order. If Annexure-13 goes, Annexure-26 also cannot stand as it is a fallout of the adjudication made by the Principal Secretary. In view of the same, Annexure-26 is also quashed. The writ application is allowed. Petitioner would be entitled to continue on the post of Mukhiya without any let or hindrance. If any steps have been taken to fill up vacancy due to his removal, the same will come to knots and nothing is required to be done as a follow up action in this regard.